



# **2003 Legislative Implementation Plan**

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September 2003  
Publication No. 03-01-022



# 2003 Legislative Implementation Plan

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Washington State Department of Ecology  
Office of Governmental Relations  
P.O. Box 47600  
Olympia, WA 98504-7600

September 2003  
Publication No. 03-01-022

*If you require this publication in an alternative format, please contact Vickie Van Ness at 360-407-7008 or TTY (for the speech or hearing impaired) at 711 or 1-800-833-6388.*



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## **ENGROSSED SUBSTITUTE HOUSE BILL 1002**

*Reducing the release of mercury into the environment*

### **PROGRAM/AGENCY IMPACTS**

Effective January 1, 2004, fluorescent lamp manufacturers are required to label fluorescent lamps as "containing mercury" and label the packaging with information that: informs the purchaser that mercury is present in the item; explains that the fluorescent lamp should be disposed of according to applicable federal, state and local laws; and provide the purchaser with a toll-free telephone number and a web site address that contains information on applicable disposal laws. Ecology will need to coordinate with lamp manufacturers and ensure that public education is provided and available that helps explain what the labels and information on the package means. Ecology will also need to ensure that whatever web site addresses are provided are accurate.

This legislation directs the Department of Health (DOH) to develop an educational plan for schools, local governments, businesses, and the public on the proper disposal methods for mercury and mercury-added products. Health received \$144,000 to develop this education plan during the 03-05 Biennium. Ecology will need to coordinate with DOH to ensure proper recycling and long-term management options are communicated per hazardous waste and solid waste regulations and guidance.

ESHB 1002 directs the Department of General Administration (GA) to, by January 1, 2005, revise its rules, policies, and guidelines to implement the purpose of this act. GA must give priority and preference to the purchase of equipment, supplies and other products that contain no mercury-added compounds. Ecology will need to coordinate with GA to ensure proper recycling and long-term management options are communicated per hazardous waste and solid waste regulations and guidance.

ESHB 1002 authorizes Ecology to participate in a regional or multi-state clearinghouse to assist in carrying out any of the requirements of this act. Ecology will join the Interstate Mercury Education and Reduction Clearinghouse (*IMERC*). This clearinghouse helps states implement laws and programs that are aimed at getting mercury out of consumer products, the waste stream, and the environment. IMERC annual dues are \$5000 per year.

Violation of this act is punishable by a civil penalty not to exceed one thousand dollars for each violation in the case of a first violation. Repeat violators are liable for a civil penalty not to exceed five thousand dollars for each repeat violation. Penalties collected under this section must be deposited in the State Toxics Control

Account created in RCW 70.105D.070. Ecology may need to develop rules to implement these penalty provisions.

Ecology is directed to petition EPA requesting development of a national mercury repository site.

This law takes effect on July 27, 2003.

## **RESOURCE IMPACTS**

\$100,000 was provided from the State Toxics Control Account for the 03-05 Biennium. Ecology originally requested \$166,000. (0.8 FTE)

Since Ecology did not receive the total funding requested, delay in implementation of certain activities, such as coordination with GA and developing rules to implement penalty provisions until future biennia may be necessary.

## **WORK PLAN**

Projected timeline and general description of Ecology's process to accomplish each requirement of the law:

### **Summer/Fall 2003:**

- **Fluorescent Lamps**  
With assistance from IMERC, identify lamp manufacturers and determine what labeling and package notification practices will be followed.
- **Begin coordinating with DOH as they develop an education plan for schools, local governments, businesses, and the public on the proper disposal methods for mercury and mercury-added products.**
- **Begin coordinating with GA as they revise its rules, policies, and guidelines related to state purchasing, proper disposal and recycling methods and other measures related to mercury and mercury-added products in the state procurement system.**
- **Join IMERC. Other member states include Connecticut, Maine, New Hampshire, New Jersey, New York, Rhode Island, and Vermont.**
- **Draft and submit a petition letter to EPA requesting development of a national mercury repository site.**

#### **Winter/Spring 2004:**

- Fluorescent Lamps  
Track lamp manufacturer labels and package notification practices. Provide technical assistance to local, state, and federal government agencies, school districts, businesses, and individuals regarding the proper handling and recycling of burned out fluorescent lamps.
- Continue coordination with DOH as education plan for schools, local governments, businesses, and the public on the proper disposal methods for mercury and mercury-added products is being developed.
- Continue coordination with GA as rules, policies, and guidelines related to state purchasing, proper disposal and recycling methods and other measures related to mercury and mercury-added products in the state procurement system are being revised.

#### **Summer/Fall 2004:**

- Continue providing technical assistance to local, state, and federal government agencies, school districts, businesses, and individuals regarding the proper handling and recycling of burned out fluorescent lamps.
- Continue coordination with DOH as education plan for schools, local governments, businesses, and the public on the proper disposal methods for mercury and mercury-added products is being developed. Education plan should be in finalization phase at this point.
- Continue coordination with GA as rules, policies, and guidelines related to state purchasing, proper disposal and recycling methods and other measures related to mercury and mercury-added products in the state procurement system are being revised. All GA rules, policies, and guidelines need to be revised and finalized by January 1, 2005.
- Rejoin IMERC.

#### **Winter/Spring 2005:**

- Continue providing technical assistance to local, state, and federal government agencies, school districts, businesses, and individuals regarding the proper handling and recycling of burned out fluorescent lamps.
- Continue coordination with DOH as education plan for schools, local governments, businesses, and the public on the proper disposal methods for mercury and mercury-added products is being implemented. Specific product bans of mercury fever thermometers, mercury-containing manometers (blood

pressure measuring devices), mercury-containing automobile light switches, mercury-containing thermometers, and mercury-containing novelty products are effective January 1, 2006.

Proposed hiring plan: Mike Gallagher, Ecology Mercury Coordinator, will be the assigned person responsible for ensuring Ecology is implementing this law.

**Contact person:** Mike Gallagher – Environmental Assessment Program;

**Phone:** 360/407-6868; **E-mail:** [mgal461@ecy.wa.gov](mailto:mgal461@ecy.wa.gov)

# FINAL BILL REPORT

## ESHB 1002

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### PARTIAL VETO

#### **C 260 L 03**

Synopsis as Enacted

**Brief Description:** Reducing the release of mercury into the environment.

**Sponsors:** By House Committee on Fisheries, Ecology & Parks (originally sponsored by Representatives Hunt, Berkey, Cooper, Romero, Linville, Chase, Kagi, Wood, Simpson, Morrell, Rockefeller, Ruderman, Fromhold, Dickerson, Conway, Kessler, Cody, Jarrett, Veloria, O'Brien, Campbell, McDermott, Clibborn, Sullivan, Nixon, McIntire, Lantz, Moeller and Hudgins).

### **House Committee on Fisheries, Ecology & Parks**

#### **Background:**

Mercury has been identified by the United States Environmental Protection Agency (EPA) as being included in a group of chemicals known as persistent bioaccumulative toxins (PBTs). Individuals within this family of toxins are known to break down very slowly when released into the environment and increase in concentration as they move up the food chain.

The 2000 Legislature directed the Department of Ecology (DOE) to develop a proposed long-term strategy to address PBTs in Washington, which was presented to the Legislature in 2001. The 2001 Legislature appropriated \$800,000 from the State Toxics Control Account specifically for the implementation of the strategy. Both the DOE and the EPA have identified mercury as the number one PBT priority.

During the 2002 session, the Legislature earmarked the \$800,000 for the DOE to develop a chemical action plan for mercury. In doing so, the Legislature provided the DOE with specific directions as to how the plan should be developed. These directions were intended to serve as a model for the development of future chemical action plans for other PBTs. The mercury action plan is required to, at a minimum:

- identify current uses for mercury in Washington;
- analyze current state and federal regulations and voluntary measures that can be used to reduce mercury;
- identify mercury reduction and elimination options; and
- implement actions to reduce or eliminate mercury uses and releases.

The final mercury action plan was scheduled to be completed in December 2002, with implementation set to begin no later than February 1, 2003. The final plan was directed to outline the actions that the DOE will take, including the development of any new rules or legislative recommendations.

### **Summary:**

A new chapter is created in the Revised Code of Washington to regulate mercury and mercury-added products. New regulations include requirements for the labeling of certain mercury-added lamps, prohibitions on the sale of certain mercury-added products, and directions to the Department of General Administration (GA) regarding the purchase of mercury-added products.

### Labeling

As of January 1, 2004, all fluorescent lamps and lamp packaging manufactured after November 20, 2003, must be specifically labeled if they contain mercury. The label on the lamp must bear the international chemical symbol for mercury, and the packaging label must clearly inform the consumer that the lamp contains mercury, explain that the lamp must be disposed of according to state, local, and federal laws, and provide a toll-free phone number and Internet address where disposal information can be obtained. The primary responsibility for labeling a mercury-added lamp belongs to the manufacturer. If a lamp is labeled in a way that meets the requirements of another state, the manufacturer is exempt from Washington's labeling requirement.

### Sale Prohibitions

The sale of certain mercury-containing products is prohibited. As of January 1, 2006, the sale of mercury-added novelties and mercury-containing thermometers and manometers is prohibited. The manufacturers of these products are required to notify all retailers about the prohibition and provide information about the proper disposal of remaining inventory.

Mercury-added novelties are products intended mainly for personal or household enjoyment or adornment. They include figurines, toys, games, cards, ornaments, jewelry, apparel, and other items. The definition expressly excludes games and toys that require certain batteries or liquid crystal display screens.

The prohibition on the sale of thermometers and manometers that include mercury does not apply to certain types of instruments. The exempt items include thermometers with a button-cell battery, thermometers used for food research or food processing, thermometers that are used in an animal agricultural climate control system, veterinary medicine, or an industrial measurement system, thermometers and manometers used for the calibration of

other thermometers or equipment, prescription thermometers, and manometers used for blood pressure measuring. In addition, the prohibition on the sale of thermometers and manometers does not extend to hospital-controlled facilities that have adopted a mercury reduction plan.

A prohibition on the sale and installation of certain mercury-containing thermostats and motor vehicles containing an automotive mercury switch takes effect on January 1, 2006. Items that are prohibited from sale are still allowed to be transported through the state or stored within the state for later distribution elsewhere.

### State Agency Directions

By January 1, 2005, the GA must revise its rules and policies to give preference and priority to the purchase of items that do not contain mercury. The GA may only purchase mercury-containing products if there is no economically feasible non-mercury alternative or if the mercury-containing product is engineered to reduce electricity consumption by at least 40 percent. If there is not a substitute to a mercury-containing product available, the GA must give preference to products that contain the least amount of mercury necessary for the required performance.

The DOE is authorized to participate in clearinghouses to assist it in implementation of the mercury regulations. These clearinghouses may also be used for examining label requirements, developing public education, and maintaining a list of all mercury-added products. The DOE is also directed to petition the EPA for the creation of a permanent mercury repository.

The Department of Health is required to develop an education plan for schools, local governments, businesses, and the public on the proper disposal methods for all bulk elemental mercury compounds. In addition, schools, by 2006, will be prohibited from purchasing elemental mercury and must remove and dispose of any mercury used in science classrooms.

Any fiscal impacts of these provisions on the DOE must be paid for by funds appropriated from the State Toxics Control Account for the implementation of the DOE's PBT strategy.

### Penalties

A violation of the new chapter regulating mercury is punishable by a civil penalty not to exceed \$1,000 for each violation. Repeat violators may be assessed a fine of up to \$5,000. All fees collected are deposited into the State Toxics Control Account.

**Votes on Final Passage:**

House	97	0	
Senate	47	1	(Senate amended)
House	97	0	(House concurred)

**Effective:** July 27, 2003

**Partial Veto Summary:** The Governor vetoed the intent section, which stated that fish caught in Washington waters were safe to eat and should be protected from any degrading influence.



## **Roll Calls on a Bill: 1002 (2003-04)**

Brief Description: Reducing the release of mercury into the environment.

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### **2003 Regular Session**

Chamber: HOUSE  
Bill No.: ESHB 1002  
Description: FINAL PASSAGE  
Item No.: 1  
Transcript No.: 45  
Date: 02-26-2003

Yeas: 97 Nays: 00 Absent: 00 Excused: 01

Voting Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Benson,  
yea: Berkey, Blake, Boldt, Buck, Bush, Cairnes, Campbell, Carrell, Chandler,  
Chase, Clements, Clibborn, Cody, Condotta, Conway, Cooper, Cox,  
Crouse, Darneille, DeBolt, Delvin, Dickerson, Dunshee, Edwards,  
Eickmeyer, Ericksen, Flannigan, Fromhold, Gombosky, Grant, Haigh,  
Hankins, Hatfield, Hinkle, Holmquist, Hudgins, Hunt, Hunter, Jarrett, Kagi,  
Kenney, Kessler, Kirby, Kristiansen, Lantz, Linville, Lovick, Mastin,  
McCoy, McDermott, McDonald, McIntire, McMahan, McMorris, Mielke,  
Miloscia, Moeller, Morrell, Morris, Murray, Newhouse, Nixon, O'Brien,  
Orcutt, Pearson, Pettigrew, Pflug, Priest, Quall, Roach, Rockefeller,  
Romero, Ruderman, Santos, Schindler, Schoesler, Schual-Berke, Sehlin,  
Shabro, Simpson, Skinner, Sommers, Sullivan, Sump, Talcott, Tom,  
Upthegrove, Wallace, Wood, Woods, and Mr. Speaker

Excused: Representative Veloria

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### **2003 Regular Session**

Chamber: SENATE  
Bill No.: ESHB 1002  
Description: 3RD READING & FINAL PASSAGE AS AMENDED BY THE  
SENATE  
Item No.: 40  
Transcript No.: 95  
Date: 04-17-2003

Yeas: 47 Nays: 01 Absent: 01 Excused: 00

Voting Senators Benton, Brandland, Brown, Carlson, Deccio, Doumit, Eide, Esser,

yea: Fairley, Finkbeiner, Franklin, Fraser, Hale, Hargrove, Haugen, Hewitt, Horn, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, McCaslin, Mulliken, Oke, Parlette, Poulsen, Prentice, Rasmussen, Reardon, Regala, Roach, Rossi, Schmidt, Sheahan, Sheldon, B., Sheldon, T., Shin, Spanel, Stevens, Swecker, Thibaudeau, West, Winsley, Zarelli

Voting Senator Morton

nay:

Absent: Senator Honeyford

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### 2003 Regular Session

Chamber: HOUSE

Bill No.: ESHB 1002

Description: FP AS AMD BY THE SENATE

Item No.: 1

Transcript No.: 100

Date: 04-22-2003

Yeas: 97 Nays: 00 Absent: 00 Excused: 01

Voting Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Benson, yea: Berkey, Blake, Boldt, Buck, Bush, Cairnes, Campbell, Carrell, Chandler, Chase, Clements, Clibborn, Cody, Condotta, Conway, Cooper, Cox, Crouse, Darneille, DeBolt, Delvin, Dickerson, Dunshee, Edwards, Eickmeyer, Ericksen, Flannigan, Fromhold, Gombosky, Grant, Haigh, Hankins, Hatfield, Hinkle, Holmquist, Hudgins, Hunt, Hunter, Jarrett, Kagi, Kenney, Kessler, Kirby, Kristiansen, Lantz, Linville, Lovick, Mastin, McCoy, McDermott, McDonald, McIntire, McMahan, McMorris, Mielke, Miloscia, Moeller, Morrell, Morris, Murray, Newhouse, Nixon, O'Brien, Orcutt, Pearson, Pettigrew, Pflug, Priest, Quall, Roach, Rockefeller, Romero, Ruderman, Santos, Schindler, Schoesler, Schual-Berke, Sehlin, Shabro, Simpson, Skinner, Sommers, Sullivan, Sump, Talcott, Tom, Voloria, Wallace, Wood, Woods, and Mr. Speaker

Excused: Representative Upthegrove

## **SECOND SUBSTITUTE HOUSE BILL 1095**

*Limiting the impact on small forest landowners caused by forest road maintenance and abandonment requirements*

### **PROGRAM/AGENCY IMPACTS**

This bill has no direct impact on Ecology. However, it significantly impacts the Forests & Fish agreement as it relates to water quality, and thus affects Ecology's role in that agreement. The bill exempts certain small forest landowners from some of the requirements for road maintenance and abandonment plans and revises other requirements, which were originally established under the Forests & Fish Report to control erosion and runoff from roads and to provide for fish passage.

These program revisions will require greater effort by Ecology and other state agencies (DNR and WDFW) to ensure that forestry activities relating to roads do not cause harm to aquatic habitat and other public resources.

### **RESOURCE IMPACTS**

There are no budgetary impacts to Ecology.

### **WORK PLAN**

The Department of Natural Resources is the lead agency for revising the forest practices rules, guidance and checklists to implement this bill. Ecology will participate both at the staff level and as a member of the Forest Practices Board (FPB). Ecology must concur with any forest practices rules that affect water quality prior to adoption of those rules by the FPB. Ecology will work closely with DNR rule-writing staff to identify and resolve any water quality issues.

Emergency rules and initial guidance and checklists are expected to be adopted by the FPB in late 2003, with permanent rules adopted in mid-2004.

Washington Department of Fish and Wildlife (WDFW) will develop a program to identify, prioritize and repair forest road stream crossing that may block fish passage or pose high risk to public resources. Ecology will coordinate with WDFW on the development and implementation of this program.

Ecology forestry staff will continue to address forestry activities that can harm water quality, through review of forest practices applications, field visits, participation on special teams and coordination with DNR. In addition, Ecology will continue to

participate as a member of the Cooperative Management, Evaluation and Research (CMER) Committee and the Forests & Fish Policy Committee.

**Contact person:** Dave Peeler – Water Quality Program; **Phone:** 360/407-6489;  
**E-mail:** [dpee461@ecy.wa.gov](mailto:dpee461@ecy.wa.gov)

# FINAL BILL REPORT

## 2SHB 1095

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C 311 L 03

Synopsis as Enacted

**Brief Description:** Limiting the impact on small forest landowners caused by forest road maintenance and abandonment requirements.

**Sponsors:** By House Committee on Appropriations (originally sponsored by Representatives Rockefeller, Sump, Linville, Orcutt, Schoesler, Pearson, Holmquist, Haigh and Kristiansen; by request of Commissioner of Public Lands).

**House Committee on Agriculture & Natural Resources**

**House Committee on Appropriations**

**Senate Committee on Natural Resources, Energy & Water**

**Senate Committee on Ways & Means**

### **Background:**

#### History of the Forests and Fish Law

The Forest and Fish Report was presented to the Forest Practices Board (Board) and the Governor's Salmon Recovery Office on February 22, 1999. The report represented the recommendations of the authors for the development and implementation of rules, statutes, and programs designed to improve and protect riparian habitat on non-federal forest lands in Washington.

In 1999 the Legislature recognized the Forest and Fish Report by passing the Forests and Fish Law. The law strongly encouraged the Board to adopt emergency rules implementing the recommendations of the Forest and Fish Report. These recommendations included the requirement that all forest landowners be required to file a road maintenance and abandonment plan (RMAP).

#### RMAP Requirements

All forest landowners must submit a RMAP to the Department of Natural Resources (DNR) by December 31, 2005, or concurrent with an application for a forest practice, whichever is sooner. The RMAP must contain ownership maps, a schedule to complete necessary road work within 15 years, standard road maintenance practices, a storm maintenance strategy, and an assessment of risks to public resources.

On each anniversary date of a RMAPs submission, the owner must file with the DNR a detailed description of the work that was accomplished the previous year and the work that is scheduled for the upcoming year. If the landowner decides not to maintain a road, he or she must indicate in the RMAP a schedule for abandoning the road.

If a landowner fails to submit a RMAP, or to comply with the work schedule outlined in the RMAP, the DNR may deny future forest practice applications made by that landowner. In addition, the RMAP requirement is considered a continuing forest land obligation. All such obligations must be disclosed by the seller of forest land to the buyer prior to sale. If the seller fails to disclose these obligations, the seller is responsible for paying the costs incurred by the buyer for compliance with the obligations.

### **Summary:**

#### Definitions

The term "small forest landowner" is defined consistently with other locations in the Revised Code of Washington. The definition of small forest landowner is generally a person or entity that harvests an average of two million board feet or less each year.

The term "forest road" is generally defined to mean any road or road segment that crosses over forest land. "Forest land" is defined to exclude residential home sites and agricultural land. "Fish passage barrier" is defined to mean artificial instream structures.

#### RMAP Reporting Requirements

The Board is instructed to adopt emergency rules by October 31, 2003, for RMAPs that are different from the recommendations of the Forest and Fish Report. Forest landowners that own a total of 80 acres or less of forest land are not required to submit an RMAP for blocks of forest land that are 20 contiguous acres or less in size.

Landowners that do not meet the 20-acre exemption, but still satisfy the definition of a small forest landowner, are only required to file a checklist RMAP and are exempted from the annual reporting requirement. Unlike standard RMAPs, checklist RMAPs do not need to be filed until the landowner files a forest practice application for a final or intermediate harvest, or for a tree salvage. The checklist RMAP must be limited in scope to the current law, and may only apply to forest roads affected by a forest practice application.

### Cost-Share Funding

The Small Forest Landowners Office (SFLO) must seek out funding to implement a cost-sharing program to assist small forest landowners with the costs of removing and replacing culverts and other man-made fish blockages.

The SFLO is directed to seek the highest possible proportion of public funding available; however, a small forest landowner is only required to contribute 25 percent of the cost of any fish barrier or culvert removal. In no instance will a small forest landowner be required to contribute more than \$5,000 towards a particular fish barrier. If a small forest landowner is required to remove a culvert that was lawfully installed, the cost-share program will pay for 100 percent of that culvert's removal costs. In addition, the annual amount that a small forest landowner can be required to pay for fish barrier removal is calculated from the amount of timber he or she harvested in the three years leading to the fish barrier removal.

If a small forest landowner is required to pay for a portion of a road maintenance project, that landowner can satisfy his or her share by providing in-kind services. In-kind services can include labor, equipment, and materials.

Limited funds for the cost-share program are directed to be applied in a worst-first manner within a watershed. The DNR is responsible for establishing an order for providing funds that is aimed at first addressing the priority blockages. In establishing this order, the DNR must coordinate with the Department of Fish and Wildlife and salmon recovery lead entities to establish an annually-updated ranked inventory of fish barriers on land owned by small forest landowners. This process first requires that all known data about the locations and impacts of fish blockages be gathered and synthesized. The funding order may be altered to reflect the addition of new information.

### Forest Practices Application Approvals

Small forest landowners will not have a forest practices application denied solely on the grounds that fish blockages have not been removed if the landowner agrees to remove the fish blockages when cost-share funding is available. The participating landowner will be able to conduct all otherwise permissible forest practices until the cost-share program provides funding for the removal of blockages on his or her land.

### Continuing Obligations

The checklist RMAP requirement is exempted from the continuing forest land obligations provision of the Forests and Fish Law. The seller of forest land is not required to notify the buyer in writing of the existence of the checklist RMAP requirement. The checklist RMAP requirement is also removed from the express

requirement that the seller pay for any continuing obligations that were not disclosed to the buyer.

**Votes on Final Passage:**

House	78	20	
Senate	49	0	(Senate amended)
House	96	0	(House concurred)

**Effective:** May 14, 2003



### **Roll Calls on a Bill: 1095 (2003-04)**

Brief                      Limiting the impact on small forest landowners caused by forest road  
Description:           maintenance and abandonment requirements.

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#### **2003 Regular Session**

Chamber:            HOUSE  
Bill No.:            2SHB 1095  
Description:        FINAL PASSAGE  
Item No.:            10  
Transcript No.:    65  
Date:                03-18-2003

Yeas: 78 Nays: 20 Absent: 00 Excused: 00

Voting   Representatives Alexander, Armstrong, Berkey, Blake, Boldt, Buck, Cairnes,  
yea:       Carrell, Chase, Clibborn, Cody, Condotta, Conway, Cooper, Crouse,  
             Darneille, DeBolt, Dickerson, Dunshee, Edwards, Eickmeyer, Ericksen,  
             Flannigan, Fromhold, Gombosky, Grant, Haigh, Hankins, Hudgins, Hunt,  
             Hunter, Jarrett, Kagi, Kenney, Kirby, Kristiansen, Lantz, Linville, Lovick,  
             McCoy, McDermott, McDonald, McIntire, McMahan, McMorris, Mielke,  
             Miloscia, Moeller, Morrell, Morris, Murray, Nixon, O'Brien, Orcutt, Pearson,  
             Pettigrew, Priest, Quall, Rockefeller, Romero, Ruderman, Santos, Schindler,  
             Schoesler, Schual-Berke, Shabro, Simpson, Sommers, Sullivan, Sump,  
             Talcott, Tom, Upthegrove, Veloria, Wallace, Wood, Woods, and Mr. Speaker

Voting   Representatives Ahern, Anderson, Bailey, Benson, Bush, Campbell,  
nay:       Chandler, Clements, Cox, Delvin, Hatfield, Hinkle, Holmquist, Kessler,  
             Mastin, Newhouse, Pflug, Roach, Sehlin, Skinner

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#### **2003 Regular Session**

Chamber:            SENATE  
Bill No.:            2SHB 1095  
Description:        3RD READING & FINAL PASSAGE AS AMENDED BY THE  
                          SENATE  
Item No.:            21  
Transcript        87  
No.:  
Date:                04-09-2003

Yeas: 49 Nays: 00 Absent: 00 Excused: 00

Voting Senators Benton, Brandland, Brown, Carlson, Deccio, Doumit, Eide, Esser,  
yea: Fairley, Finkbeiner, Franklin, Fraser, Hale, Hargrove, Haugen, Hewitt,  
Honeyford, Horn, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles,  
McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Poulsen, Prentice,  
Rasmussen, Reardon, Regala, Roach, Rossi, Schmidt, Sheahan, Sheldon,  
B., Sheldon, T., Shin, Spanel, Stevens, Swecker, Thibaudeau, West,  
Winsley, Zarelli

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### 2003 Regular Session

Chamber: HOUSE  
Bill No.: 2SHB 1095  
Description: FP AS AMD BY THE SENATE  
Item No.: 7  
Transcript No.: 99  
Date: 04-21-2003

Yeas: 96 Nays: 00 Absent: 00 Excused: 02

Voting Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Benson,  
yea: Berkey, Blake, Boldt, Buck, Bush, Cairnes, Carrell, Chandler, Chase,  
Clements, Clibborn, Cody, Condotta, Conway, Cooper, Cox, Crouse,  
Darneille, DeBolt, Delvin, Dickerson, Dunshee, Edwards, Eickmeyer,  
Ericksen, Flannigan, Fromhold, Gombosky, Grant, Haigh, Hankins,  
Hatfield, Hinkle, Holmquist, Hudgins, Hunt, Hunter, Jarrett, Kagi, Kenney,  
Kessler, Kirby, Kristiansen, Lantz, Linville, Lovick, Mastin, McCoy,  
McDermott, McDonald, McIntire, McMahan, McMorris, Miloscia, Moeller,  
Morrell, Morris, Murray, Newhouse, Nixon, O'Brien, Orcutt, Pearson,  
Pettigrew, Pflug, Priest, Quall, Roach, Rockefeller, Romero, Ruderman,  
Santos, Schindler, Schoesler, Schual-Berke, Sehlin, Shabro, Simpson,  
Skinner, Sommers, Sullivan, Sump, Talcott, Tom, Upthegrove, Veloria,  
Wallace, Wood, Woods, and Mr. Speaker

Excused: Representatives Campbell, Mielke

## **SUBSTITUTE HOUSE BILL 1113**

*Regarding irrigation district boards of joint control*

### **PROGRAM/AGENCY IMPACTS**

This bill broadens the existing statutes governing irrigation district boards of joint control. It now allows a water company, water user association, municipality, water right owner, irrigation district patron or any other entity providing irrigation water as a primary purpose to form or join an irrigation district board of joint control with an irrigation district or federal reclamation project division operating entity.

The primary effect on the Department of Ecology is that joint boards can transfer water and water rights within their jurisdiction without first seeking approval of a change of place of use from the Department. Rather, under the amended law, a joint board formed after January 1, 2003 is required to inform the Department of such transfers. By expanding the types of participating entities, the number of such transfers not requiring a decision by the Department is likely to increase. However, the effect of this change in law is not expected to be significant because water right transfers associated with joint boards of control are believed to constitute a miniscule proportion of all water right changes and transfers filed with the Department.

### **RESOURCE IMPACTS**

The Department did not request any new funding to implement the bill, nor did it receive any. The bill is not expected to increase workload on the Department and if anything will decrease water rights processing workload over time. The bill could cause a very small reduction of revenue collected by the Department when it processes transfer applications. All water right application processing generates only about \$20,000 in annual revenue.

### **WORK PLAN**

Because the bill does not create any new workload, no specific workplan is needed or proposed. Rather, the Department will incorporate the policy changes into its day to day water rights processing operations. Any person making an inquiry about the need for a water right transfer in a situation as described in the bill will be informed that it is not necessary to apply.

**Contact person:** Kenneth Slattery – Water Resources Program;  
Phone: 360/407-6603; E-mail: [kshw461@ecy.w.gov](mailto:kshw461@ecy.w.gov)

# FINAL BILL REPORT

## SHB 1113

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### C 306 L 03

Synopsis as Enacted

**Brief Description:** Regarding irrigation district boards of joint control.

**Sponsors:** By House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Hinkle, Linville, Schoesler, Boldt and Mielke).

**House Committee on Agriculture & Natural Resources**  
**Senate Committee on Natural Resources, Energy & Water**

#### **Background:**

An irrigation district may be created to provide a system of water distribution for irrigation purposes. In addition, an irrigation district has authority to buy and sell electric power for irrigation and domestic use, operate a domestic water system for irrigated land owners, and operate a drainage or sewage system.

Two or more irrigation entities may create a board of joint control. An "irrigation entity" is defined for purposes of the board of joint control statutes as an irrigation district or an operating entity for a division within a federal reclamation project. A board of joint control may be created to:

- construct, operate, manage, and improve joint use facilities owned or controlled by participating irrigation entities; and
- conduct activities and programs promoting effective and efficient water management for member entities' benefit.

Among other powers, a board of joint control may acquire property or property rights within its area of jurisdiction by eminent domain in the same manner as irrigation districts. A board of joint control also may construct and operate drainage projects and water quality enhancement projects. In addition, a board of joint control may pursue conservation and system efficiency improvements and redistribute the saved water within its jurisdictional area or transfer it to others. Redistribution or transfer may not impair existing water rights outside the board of joint control's jurisdictional area. A board of joint control may not authorize changes in place of diversion or use or changes in purpose of use without the approval of the Department of Ecology and of the United States Bureau of Reclamation if within a federal reclamation area.

Washington courts have considered challenges to legislative grants of authority to perform some regulatory, disciplinary, or other functions to certain private associations or entities. In those cases, Washington courts have considered whether an unlawful delegation of legislative authority has occurred by examining factors such as whether the Legislature has provided standards or guidelines for delegated entities' action and included procedural safeguards to control arbitrary action or abuse of discretion.

### **Summary:**

Definitions within the board of joint control statutes are amended. The "irrigation entity" definition includes a water company, water users' association, municipality, water right owner and user of irrigation water, and any other entity providing irrigation water as a primary purpose when these private or public entities create or join a board of joint control with an irrigation district or operating entity for a division within a federal reclamation project. The definition of "joint use facilities" is amended to include ditches and natural streams in which the irrigation entity has rights of conveyance. The definition of "source of water" is amended to include tributary systems.

When a board of joint control includes irrigation entities other than an irrigation district or operating entity for a division within a federal reclamation project, the voting structure must be established so that the votes apportioned to these other entities are less than 50 percent of the total votes.

Provisions regarding water transfers are amended. Any change in place of use from a transfer of water between individual entities of a board of joint control must not reduce the total water supply available in a federal reclamation project. A board of joint control must consult with the federal Bureau of Reclamation when determining whether such a reduction may occur in an area covered by a federal reclamation project. In addition, a board of joint control created after January 1, 2003, must notify the Department of Ecology and any Indian tribe requesting notice of transfers of water between the individual entities of the board of joint control.

These provisions may not be interpreted to authorize impairment of existing water rights.

### **Votes on Final Passage:**

House	95	0	
Senate	48	0	(Senate amended)
House	97	0	(House concurred)

**Effective:** July 27, 2003

### **Roll Calls on a Bill: 1113 (2003-04)**

Brief Description: Regarding irrigation district boards of joint control.

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#### **2003 Regular Session**

Chamber: HOUSE  
Bill No.: SHB 1113  
Description: FINAL PASSAGE  
Item No.: 14  
Transcript No.: 59  
Date: 03-12-2003

Yeas: 95 Nays: 00 Absent: 00 Excused: 03

Voting Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Benson,  
yea: Berkey, Blake, Buck, Bush, Cairnes, Campbell, Carrell, Chandler, Chase,  
Clements, Clibborn, Cody, Condotta, Conway, Cooper, Cox, Crouse,  
Darneille, DeBolt, Delvin, Dickerson, Dunshee, Eickmeyer, Ericksen,  
Flannigan, Fromhold, Gombosky, Grant, Haigh, Hankins, Hatfield, Hinkle,  
Holmquist, Hudgins, Hunt, Hunter, Jarrett, Kagi, Kenney, Kessler, Kirby,  
Kristiansen, Lantz, Linville, Lovick, Mastin, McCoy, McDermott, McDonald,  
McIntire, McMahan, McMorris, Mielke, Miloscia, Moeller, Morrell, Morris,  
Murray, Newhouse, Nixon, O'Brien, Orcutt, Pearson, Pettigrew, Priest,  
Quall, Roach, Rockefeller, Romero, Ruderman, Santos, Schindler,  
Schoesler, Schual-Berke, Sehlin, Shabro, Simpson, Skinner, Sommers,  
Sullivan, Sump, Talcott, Tom, Upthegrove, Veloria, Wallace, Wood,  
Woods, and Mr. Speaker

Excused: Representatives Boldt, Edwards, Pflug

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#### **2003 Regular Session**

Chamber: SENATE  
Bill No.: SHB 1113  
Description: 3RD READING & FINAL PASSAGE AS AMENDED BY THE  
SENATE  
Item No.: 46  
Transcript No.: 92  
Date: 04-14-2003

Yeas: 48 Nays: 00 Absent: 00 Excused: 01

Voting      Senators Benton, Brandland, Brown, Carlson, Deccio, Doumit, Eide,  
yea:          Esser, Fairley, Finkbeiner, Franklin, Fraser, Hale, Hargrove, Haugen,  
                Hewitt, Honeyford, Horn, Jacobsen, Johnson, Kastama, Keiser, Kline,  
                Kohl-Welles, McAuliffe, Morton, Mulliken, Oke, Parlette, Poulsen,  
                Prentice, Rasmussen, Reardon, Regala, Roach, Rossi, Schmidt,  
                Sheahan, Sheldon, B., Sheldon, T., Shin, Spanel, Stevens, Swecker,  
                Thibaudeau, West, Winsley, Zarelli

Excused: Senator McCaslin

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### 2003 Regular Session

Chamber:      HOUSE  
Bill No.:       SHB 1113  
Description:   FP AS AMD BY THE SENATE  
Item No.:       3  
Transcript No.: 100  
Date:            04-22-2003

Yeas: 97 Nays: 00 Absent: 00 Excused: 01

Voting      Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Benson,  
yea:          Berkey, Blake, Boldt, Buck, Bush, Cairnes, Campbell, Carrell, Chandler,  
                Chase, Clements, Clibborn, Cody, Condotta, Conway, Cooper, Cox,  
                Crouse, Darneille, DeBolt, Delvin, Dickerson, Dunshee, Edwards,  
                Eickmeyer, Ericksen, Flannigan, Fromhold, Gombosky, Grant, Haigh,  
                Hankins, Hatfield, Hinkle, Holmquist, Hudgins, Hunt, Hunter, Jarrett, Kagi,  
                Kenney, Kessler, Kirby, Kristiansen, Lantz, Linville, Lovick, Mastin,  
                McCoy, McDermott, McDonald, McIntire, McMahan, McMorris, Mielke,  
                Miloscia, Moeller, Morrell, Morris, Murray, Newhouse, Nixon, O'Brien,  
                Orcutt, Pearson, Pettigrew, Pflug, Priest, Quall, Roach, Rockefeller,  
                Romero, Ruderman, Santos, Schindler, Schoesler, Schual-Berke, Sehlin,  
                Shabro, Simpson, Skinner, Sommers, Sullivan, Sump, Talcott, Tom,  
                Veloria, Wallace, Wood, Woods, and Mr. Speaker

Excused: Representative Upthegrove





## **ENGROSSED SUBSTITUTE HOUSE BILL 1242**

*Encouraging the use of biodiesel by state agencies*

### **PROGRAM/AGENCY IMPACTS**

All state agencies including Ecology are encouraged to use a blend of 20 percent biodiesel (B20) with regular petroleum diesel for diesel fuel vehicles.

By June 1, 2006, in complying with the federal standard for diesel fuels for use in on-highway vehicles, state agencies must use biodiesel as an additive to ultra-low sulfur diesel in an amount not less than 2 percent biodiesel if the use of a lubricity additive is warranted and if the performance and cost of a biodiesel additive is comparable to other lubricity additives.

### **RESOURCE IMPACTS**

No resources were provided to implement the bill. Ecology currently operates approximately 5 diesel powered vehicles and refuels those vehicles at readily accessible commercial outlets for diesel fuel. Biodiesel fuel costs approximately \$0.15 more per gallon than conventional diesel and is not available at most commercial refueling outlets. Since Ecology has no on-site fueling capacity, has very few diesel vehicles and access to biodiesel is very limited it is not likely that much B20 will be used by the agency between now and 2006. Increased costs for any biodiesel used would be small.

### **WORK PLAN**

Assess opportunities and outlets for obtaining biodiesel fuel near each of Ecology's offices and provide this information to diesel vehicle operators by June 30, 2004. Encourage operators to refuel with 20% biodiesel when and where readily obtainable.

Track lubricity issue as federal diesel fuel rule is implemented and assess if biodiesel is warranted as a lubricity agent and its cost. Make determination by June 1, 2006.

Incorporate 2% biodiesel into fuel if warranted and cost effective beginning June 1, 2006.

**Contact person:** Stu Clark – Air Quality Program

**Phone:** 360/407-6873; **E-mail:** [scla461@ecy.wa.gov](mailto:scla461@ecy.wa.gov)

# FINAL BILL REPORT

## ESHB 1242

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### C 17 L 03

Synopsis as Enacted

**Brief Description:** Establishing requirements for the use of biodiesel by state agencies.

**Sponsors:** By House Committee on Technology, Telecommunications & Energy (originally sponsored by Representatives Sullivan, Crouse, Wood, Morris, Grant, Schoesler, Quall, Ruderman and Mielke).

**House Committee on Technology, Telecommunications & Energy**  
**Senate Committee on Natural Resources, Energy & Water**

#### **Background:**

Biodiesel is a non-petroleum diesel fuel produced from renewable sources such as vegetable oils, animal fats, and recycled cooking oils. It can be blended at any percentage with petroleum diesel or used as a pure product (neat diesel). Other states have adopted policies and incentives to encourage the use of biodiesel.

Blended biodiesel is in use in Washington to fuel some passenger cars and municipal vehicles.

Ultra-low sulfur diesel fuel is a specially refined diesel fuel that has lower sulfur content than regular on-highway diesel. The sulfur content ranges from 15 to 30 parts per million. Regular diesel has a maximum of 500 parts per million of sulfur.

The U.S. Environmental Protection Agency is requiring that all on-highway diesel fuel must meet the ultra-low sulfur diesel standards beginning in 2006.

#### **Summary:**

All state agencies are encouraged to use a blend of 20 percent biodiesel (B20) with petroleum diesel for diesel fuel vehicles.

By June 1, 2006, in complying with the federal standard for diesel fuels for use in on-highway vehicles, state agencies must use biodiesel as an additive to ultra-low sulfur diesel in an amount not less than 2 percent biodiesel if the use of a lubricity additive is warranted and if the performance and cost of a biodiesel additive is comparable to other lubricity additives.

**Votes on Final Passage:**

House	86 7
Senate	48 0

**Effective:** July 27, 2003

### Roll Calls on a Bill: 1242 (2003-04)

Brief Establishing requirements for the use of biodiesel by state agencies.  
Description: **Revised for 1st Substitute:** Establishing requirements for the use of biodiesel by state agencies. (REVISED FOR ENGROSSED: Encouraging the use of biodiesel by state agencies.)

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#### 2003 Regular Session

Chamber: HOUSE  
Bill No.: ESHB 1242  
Description: FINAL PASSAGE  
Item No.: 28  
Transcript No.: 58  
Date: 03-11-2003

Yeas: 86 Nays: 07 Absent: 00 Excused: 05

Voting Representatives Ahern, Armstrong, Bailey, Benson, Berkey, Blake, Boldt,  
yea: Buck, Bush, Cairnes, Campbell, Carrell, Chase, Clements, Clibborn, Cody, Conway, Cooper, Cox, Crouse, Darneille, Dickerson, Dunshee, Eickmeyer, Ericksen, Flannigan, Fromhold, Gombosky, Grant, Haigh, Hankins, Hatfield, Hinkle, Holmquist, Hudgins, Hunt, Hunter, Jarrett, Kagi, Kenney, Kessler, Kirby, Kristiansen, Lantz, Linville, Lovick, McCoy, McDermott, McDonald, McIntire, McMorris, Miloscia, Moeller, Morrell, Morris, Murray, Newhouse, Nixon, O'Brien, Orcutt, Pearson, Pettigrew, Priest, Quall, Roach, Rockefeller, Romero, Ruderman, Santos, Schindler, Schual-Berke, Sehlin, Shabro, Simpson, Skinner, Sommers, Sullivan, Sump, Talcott, Tom, Upthegrove, Veloria, Wallace, Wood, Woods, and Mr. Speaker

Voting Representatives Alexander, Anderson, Condotta, DeBolt, Delvin,  
nay: McMahan, Mielke

Excused: Representatives Chandler, Edwards, Mastin, Pflug, Schoesler

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#### 2003 Regular Session

Chamber: SENATE  
Bill No.: ESHB 1242  
Description: 3RD READING & FINAL PASSAGE  
Item No.: 7  
Transcript No.: 87  
Date: 04-09-2003

Yeas: 48 Nays: 00 Absent: 00 Excused: 01

Voting     Senators Benton, Brandland, Carlson, Deccio, Doumit, Eide, Esser,  
yea:        Fairley, Finkbeiner, Franklin, Fraser, Hale, Hargrove, Haugen, Hewitt,  
              Honeyford, Horn, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-  
              Welles, McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Poulsen,  
              Prentice, Rasmussen, Reardon, Regala, Roach, Rossi, Schmidt,  
              Sheahan, Sheldon, B., Sheldon, T., Shin, Spanel, Stevens, Swecker,  
              Thibaudeau, West, Winsley, Zarelli

Excused: Senator Brown



## **ENGROSSED SUBSTITUTE HOUSE BILL 1243**

*Establishing a biodiesel pilot project for school transportation*

### **PROGRAM/AGENCY IMPACTS**

ESHB 1243 does not require any work by or response from the Department of Ecology. The bill requires the Superintendent of Public Instruction (OSPI) to conduct a pilot project using biodiesel along with ultra-low sulfur diesel (ULSD) in diesel engine school buses in two school districts beginning in the school year starting September 2003.

The Superintendent of Public Instruction (OSPI) must report findings on emissions, maintenance and vehicle performance from the pilot project to the Legislature by September 1, 2005.

The Department of Ecology may be asked to assist OSPI in designing the emission testing components of the pilot studies or to assist in conducting emission tests for buses in the pilot studies.

### **RESOURCE IMPACTS**

No resources were provided to implement the legislation. The Department of Ecology has offered to use a limited amount from monies provided to it under ESSB 6072 to assist OSPI in carrying out the pilot project.

### **WORK PLAN**

- August 2003: Provide OSPI the names of primary contacts within local air agencies and the Department of Ecology who can assist OSPI with the pilot projects.
- September 2003 – June 2004: Provide technical assistance to OSPI on emission test methods and procedures as requested and as resources are available.

**Contact person:** Stu Clark – Air Quality Program; **Phone:** 360/407-6873;  
**E-mail:** [scla461@ecy.wa.gov](mailto:scla461@ecy.wa.gov)

# FINAL BILL REPORT

## ESHB 1243

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### C 64 L 03

Synopsis as Enacted

**Brief Description:** Establishing a biodiesel pilot project for school transportation.

**Sponsors:** By House Committee on Technology, Telecommunications & Energy (originally sponsored by Representatives Sullivan, Wood, Crouse, Morris and Schoesler).

**House Committee on Technology, Telecommunications & Energy**  
**Senate Committee on Natural Resources, Energy & Water**

#### **Background:**

Biodiesel is a non-petroleum diesel fuel produced from renewable sources such as vegetable oils, animal fats, and recycled cooking oils. It can be blended at any percentage with petroleum diesel or used as a pure product (neat diesel). Other states have adopted policies and incentives to encourage the use of biodiesel.

Biodiesel is registered as a fuel and fuel additive with the U.S. Environmental Protection Agency and has completed health effects testing requirements of the Clean Air Act. The American Society of Testing and Materials (ASTM) has issued a standard for all biodiesel bought and sold in the United States (Specification D 6751). Blended biodiesel is in use in Washington to fuel some passenger cars and municipal vehicles.

Ultra-low sulfur diesel fuel is a specially refined diesel fuel that has lower sulfur content than regular on-highway diesel. The sulfur content ranges from 15 to 30 parts per million. Regular diesel has a maximum of 500 parts per million of sulfur.

The U.S. Environmental Protection Agency is requiring that all on-highway diesel fuel must meet the ultra-low sulfur diesel standards beginning in 2006.

**Summary:** For the school year beginning September 2003, the Superintendent of Public Instruction must conduct a pilot project using biodiesel along with ultra-low sulfur diesel (ULSD) in diesel engine school buses.

The pilot project must include two school districts. Priority is given to districts located in geographic areas identified by the U.S. Environmental Protection Agency as areas of concern for pollution emissions.



Conditions of the pilot project for the selected districts include the following:

- ULSD must be used in 25 percent of the school bus fleet for the district or in at least 10 buses for at least one of the pilot districts during the 2003 school year;
- Emissions must be tested prior to the use of ULSD and again six months after commencing use;
- ULSD must be used with 20 percent biodiesel during the 2004 school year in 75 percent, or at least seven, of the school buses that used ULSD in the 2003 school year and one participating district may use a blend of 20 percent biodiesel for the entire pilot period;
- Emissions must be tested after six months of using the biodiesel additive; and
- Maintenance issues must be recorded.

The Superintendent of Public Instruction must report findings from the pilot project to the Legislature by September 1, 2005.

Funding for the pilot project may not use State General Fund moneys.

**Votes on Final Passage:**

House	81	12
Senate	46	0

**Effective:** July 27, 2003

## **Roll Calls on a Bill: 1243 (2003-04)**

Brief Description: Establishing a biodiesel pilot project for school transportation.

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### **2003 Regular Session**

Chamber: HOUSE  
Bill No.: ESHB 1243  
Description: FINAL PASSAGE  
Item No.: 29  
Transcript No.: 58  
Date: 03-11-2003

Yeas: 81 Nays: 12 Absent: 00 Excused: 05

Voting Representatives Ahern, Armstrong, Bailey, Benson, Berkey, Blake, Boldt,  
yea: Buck, Bush, Cairnes, Campbell, Carrell, Chase, Clibborn, Cody, Conway,  
Cooper, Cox, Crouse, Darneille, Dickerson, Dunshee, Eickmeyer,  
Ericksen, Flannigan, Fromhold, Gombosky, Grant, Haigh, Hankins,  
Hatfield, Hudgins, Hunt, Hunter, Jarrett, Kagi, Kenney, Kessler, Kirby,  
Lantz, Linville, Lovick, McCoy, McDermott, McDonald, McIntire, McMorris,  
Mielke, Miloscia, Moeller, Morrell, Morris, Murray, Newhouse, Nixon,  
O'Brien, Orcutt, Pettigrew, Priest, Quall, Rockefeller, Romero, Ruderman,  
Santos, Schindler, Schual-Berke, Sehlin, Shabro, Simpson, Skinner,  
Sommers, Sullivan, Sump, Talcott, Tom, Upthegrove, Veloria, Wallace,  
Wood, Woods, and Mr. Speaker

Voting Representatives Alexander, Anderson, Clements, Condotta, DeBolt,  
nay: Delvin, Hinkle, Holmquist, Kristiansen, McMahan, Pearson, Roach

Excused: Representatives Chandler, Edwards, Mastin, Pflug, Schoesler

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### **2003 Regular Session**

Chamber: SENATE  
Bill No.: ESHB 1243  
Description: 3RD READING & FINAL PASSAGE  
Item No.: 10  
Transcript No.: 87  
Date: 04-09-2003

Yeas: 46 Nays: 00 Absent: 00 Excused: 03

Voting Senators Benton, Brandland, Brown, Carlson, Deccio, Doumit, Eide,  
yea: Esser, Fairley, Finkbeiner, Franklin, Fraser, Hale, Hargrove, Haugen,  
Honeyford, Horn, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-

Welles, McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Poulsen,  
Prentice, Rasmussen, Reardon, Regala, Roach, Schmidt, Sheahan,  
Sheldon, B., Sheldon, T., Shin, Spanel, Stevens, Swecker, Thibaudeau,  
West, Winsley

Excused: Senators Hewitt, Rossi, Zarelli



## **SECOND ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1336**

### *Concerning watershed planning*

#### **PROGRAM/AGENCY IMPACTS**

This legislation amends RCW 90.82, the Watershed Planning Act, and establishes a Phase 4 for watershed plan implementation and authorizes state funding to support plan implementation. For planning units who accept phase 4 grant funds, it requires them to complete a detailed implementation plan within one year of accepting implementation funds. It requires watershed planning groups to coordinate with other entities planning in the watershed. The bill allows counties, under certain conditions, to opt out of watershed planning and the public hearing process and requires such counties to notify the Department of Ecology and the other initiating governments of that choice prior to commencement of plan adoption. With the consent of the planning unit, it allows state agency obligations to a watershed plan to be adopted by policy, procedures or agreements in lieu of or in addition to rules.

2E2SHB 1336 requires Ecology to establish a matching grant program for Phase 4 implementation of up to \$100,000 for each planning unit for each of the first 3 years, and an additional \$25,000 per WRIA for those planning units that cover more than one WRIA (and half those amounts for years 4 and 5).

It requires Ecology to report to the Legislature by Dec. 1, 2003, and each Dec. 1 thereafter, on: 1) the "...statutory changes necessary to enable state agency approval or permit decision making needed to implement a(n approved) plan..." and 2) the progress of instream flow setting, whether under RCW 90.82 or not.

It requires Ecology, if it participated in development of the plan, to accept an approved plan as "...satisfy(ing) the watershed planning authority of the Department with respect to..." water quantity, instream flows, water quality, and habitat.

It requires Ecology to use the plan as the "...framework for making future water resources decisions" and "rely upon the plan as a primary consideration in determining the public interest..."

It requires Ecology to use a negotiated rule-making process, similar to the process used in developing the plan, for any future modifications of an approved plan or its obligations.

It gives Ecology flexibility to adopt policies, procedures or agreements, in lieu of or in addition to rules, if consent is obtained from the planning unit to do so.

## RESOURCE IMPACTS

No new funding or FTE's were provided. Ecology assumed it could manage implementation of this bill with existing staff and appropriation of the full \$11.2 million biennial budget request for watershed planning (\$8.2M carry forward and \$3M re-appropriation).

## WORK PLAN

By October 31, 2003, we will develop a Phase 4 grant process. This will involve developing a new application, eligibility criteria, a system for tracking grants and match requirements.

For the December 1 report on statutory changes, we will review those plans that have been approved for any identified state approvals or permits needed for implementation and analyze them for any potential statutory changes needed. We will prepare a report summarizing findings and present it to the Legislature.

For the December 1 instream flow report, the Water Resources Program will analyze available information to ascertain the status of instream flow setting statewide. They will prepare a report summarizing findings and present it to the Legislature.

Ecology will take the information contained in any adopted watershed plan into consideration when making future water resource or water quality (TMDL) decisions.

At some point in the future, if a watershed plan rule undergoes amendment, Ecology will use a negotiated rule adoption process.

**Contact person:** Gale Blomstrom – Shorelands and Environmental Assistance Program; **Phone:** 360/407-6548; **E-mail:** [gblo461@ecy.wa.gov](mailto:gblo461@ecy.wa.gov)

# FINAL BILL REPORT

## 2E2SHB 1336

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### C 4 L 03

Synopsis as Enacted

**Brief Description:** Concerning watershed planning grants and implementation lead agencies.

**Sponsors:** By House Committee on Appropriations (originally sponsored by Representatives Linville, Kirby, Grant, Rockefeller, Quall, Hunt, Shabro, Jarrett, Delvin, Morris and Conway; by request of Governor Locke).

**House Committee on Agriculture & Natural Resources**

**House Committee on Appropriations**

**Senate Committee on Natural Resources, Energy & Water**

#### **Background:**

Watershed Planning. State watershed planning laws provide a process for conducting watershed planning through a locally initiated process. If planning is conducted under this process, it must include a component on current and future water availability and use. It may include components regarding instream flows, water quality, and habitat.

Watershed planning may be conducted for one watershed or water resource inventory area (WRIA) or it may be conducted for multiple WRIs. For this purpose, the local governments that initiate the process select or create a planning unit and designate a lead agency to provide staff support for the planning unit. Grants are available from the Department of Ecology (DOE) for organizing a planning unit and establishing work schedules, for conducting assessments, studying storage opportunities, and setting instream flows, and for developing a watershed plan and making recommendations for actions to be taken. Once a plan is approved by the planning unit, it is submitted to each of the counties with territory in the watershed or watersheds for which planning was conducted. After publishing notice and conducting at least one public hearing per county, the legislative authorities of these counties are to approve or disapprove of the plan in a joint session. If approved by the counties, the plan is an approved watershed plan.

Other Water-Related Planning in Watersheds. Under the salmon recovery laws, committees evaluate and develop habitat project lists which a local "lead entity" submits to the state's Salmon Recovery Funding Board for ranking and awarding of funding. The DOE is the state agency delegated authority to implement

provisions of the federal Clean Water Act. Under that authority, the DOE develops total maximum daily load assessments and allocations (TMDLs) for water bodies that violate water quality standards. The TMDLs are submitted to the U. S. Environmental Protection Agency for approval.

### **Summary:**

Grants. State phase IV grants for watershed plan coordination and oversight are authorized. A planning unit may receive up to: \$100,000 for each of the first three years; and \$50,000 per year for each of two extension years. If planning was conducted for more than one WRIA, an additional \$25,000 per year per additional WRIA may be available for first three years; and an additional \$12,500 per year per additional WRIA for the two extension years. A match of 10 percent is required for the funding. The match may include financial contributions or in-kind goods and services directly related to coordination and oversight functions.

Detailed Implementation Plans. Within one year of accepting phase IV funding, the planning unit must complete a detailed implementation plan. Submitting a detailed implementation plan to the DOE is a condition for receiving grants for the second and all subsequent years of the phase IV grant. The implementation plan must contain strategies to provide sufficient water for: production agriculture; commercial, industrial, and residential use; and instream flows. It must contain time-lines to achieve these strategies and interim milestones to measure progress. It must also clearly define: coordination and oversight responsibilities; any needed interlocal agreements, rules, or ordinances; any needed state or local administrative approvals and permits that must be secured; and specific funding mechanisms. The planning unit must consult with other entities planning in the watershed management area and identify and seek to eliminate any activities or policies that are duplicative or inconsistent.

Approving a Plan - Opting Out. A county legislative authority may choose to opt out of watershed planning if the county's affected territory within a watershed planning area is less than 5 percent of the total territory within the area. It may also opt out if its part of the planning area is 5 percent or more with the consent of all other governments that initiated planning in the area. The county must notify the DOE and the other initiating governments of that choice prior to the beginning of the process to adopt the plan. Such a county is not bound by obligations contained in the watershed plan.

Effect of a Plan. If the DOE participated in the planning process leading to the adoption of a watershed plan under the watershed planning laws, the plan is deemed to satisfy the watershed planning authority of the DOE with respect to the components included in the plan for the watershed. The DOE must use such a plan as the framework for making future water resource decisions for the watershed and must rely upon the plan as a primary consideration in determining



the public interest related to those decisions. Once a watershed plan has been approved under these laws for a watershed, the DOE may develop and adopt modifications to the plan or obligations imposed by the plan only through a form of negotiated rule-making that uses the same processes that applied in that watershed for developing the plan.

Reports. By December 1, 2003, and by December 1st of each subsequent year, the DOE must report to the Legislature regarding: statutory changes necessary to enable state agency approval or permit decision making needed to implement an approved plan; and on the progress of setting instream flows as part of watershed planning and otherwise.

Other. A state agency may adopt policies, procedures, or agreements related to the obligations or implementation of the obligations in addition to or in lieu of adopting implementing rules if the agency has the consent of the planning unit to do so. Entities carrying out their obligations under a watershed plan should annually review implementation needs with respect to budget and staffing and organizations voluntarily accepting such an obligation must additionally adopt policies, procedures, agreements, rules, or ordinances for carrying out those obligations.

**Votes on Final Passage:**

House	56	41
Senate	37	11(Senate amended)

First Special Session

House	73	24
Senate	31	13

**Effective:** September 9, 2003

### Roll Calls on a Bill: 1336 (2003-04)

Brief Description: Concerning watershed planning grants and implementation lead agencies.  
**Revised for 1st Substitute:** Concerning watershed planning.

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#### 2003 Regular Session

Chamber: HOUSE  
Bill No.: 2E2SHB 1336  
Description: 265 CHANDLER PG 8 LN 14  
Item No.: 24  
Transcript No.: 65  
Date: 03-18-2003

Yeas: 46 Nays: 51 Absent: 00 Excused: 01

Voting yea: Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Benson, Boldt, Buck, Bush, Cairnes, Campbell, Carrell, Chandler, Clements, Condotta, Cox, Crouse, DeBolt, Delvin, Ericksen, Hatfield, Hinkle, Holmquist, Jarrett, Kristiansen, Mastin, McDonald, McMahan, McMorris, Mielke, Newhouse, Nixon, Orcutt, Pearson, Pflug, Priest, Roach, Schindler, Schoesler, Sehlin, Shabro, Skinner, Sump, Talcott, Tom, Woods

Voting nay: Representatives Berkey, Blake, Chase, Clibborn, Cody, Conway, Cooper, Darneille, Dickerson, Dunshee, Eickmeyer, Flannigan, Fromhold, Gombosky, Grant, Haigh, Hankins, Hudgins, Hunt, Hunter, Kagi, Kenney, Kessler, Kirby, Lantz, Linville, Lovick, McCoy, McDermott, McIntire, Miloscia, Moeller, Morrell, Morris, Murray, O'Brien, Pettigrew, Quall, Rockefeller, Romero, Ruderman, Santos, Schual-Berke, Simpson, Sommers, Sullivan, Upthegrove, Veloria, Wallace, Wood, and Mr. Speaker

Excused: Representative Edwards

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#### 2003 Regular Session

Chamber: HOUSE  
Bill No.: 2E2SHB 1336  
Description: FINAL PASSAGE  
Item No.: 25  
Transcript No.: 65  
Date: 03-18-2003

Yeas: 56 Nays: 41 Absent: 00 Excused: 01

Voting Representatives Berkey, Cairnes, Chase, Clibborn, Cody, Conway,  
yea: Cooper, Darneille, Dickerson, Dunshee, Eickmeyer, Flannigan, Fromhold,  
Gombosky, Grant, Haigh, Hankins, Hudgins, Hunt, Hunter, Jarrett, Kagi,  
Kenney, Kessler, Kirby, Lantz, Linville, Lovick, McCoy, McDermott,  
McIntire, Miloscia, Moeller, Morrell, Morris, Murray, Nixon, O'Brien,  
Pettigrew, Priest, Quall, Rockefeller, Romero, Ruderman, Santos, Schual-  
Berke, Shabro, Simpson, Sommers, Sullivan, Tom, Upthegrove, Voloria,  
Wallace, Wood, and Mr. Speaker

Voting Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Benson,  
nay: Blake, Boldt, Buck, Bush, Campbell, Carrell, Chandler, Clements,  
Condotta, Cox, Crouse, DeBolt, Delvin, Ericksen, Hatfield, Hinkle,  
Holmquist, Kristiansen, Mastin, McDonald, McMahan, McMorris, Mielke,  
Newhouse, Orcutt, Pearson, Pflug, Roach, Schindler, Schoesler, Sehlin,  
Skinner, Sump, Talcott, Woods

Excused: Representative Edwards

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### 2003 Regular Session

Chamber: SENATE  
Bill No.: 2E2SHB 1336  
Description: 3RD READING & FINAL PASSAGE AS AMENDED BY THE  
SENATE  
Item No.: 51  
Transcript 93  
No.:  
Date: 04-15-2003

Yeas: 37 Nays: 11 Absent: 00 Excused: 01

Voting Senators Benton, Brandland, Carlson, Deccio, Doumit, Eide, Esser,  
yea: Finkbeiner, Hale, Hargrove, Haugen, Hewitt, Honeyford, Horn, Johnson,  
Kastama, Keiser, Kline, Morton, Mulliken, Oke, Parlette, Poulsen,  
Rasmussen, Regala, Roach, Rossi, Schmidt, Sheahan, Sheldon, B.,  
Sheldon, T., Shin, Stevens, Swecker, West, Winsley, Zarelli

Voting Senators Brown, Fairley, Franklin, Fraser, Jacobsen, Kohl-Welles,  
nay: McAuliffe, Prentice, Reardon, Spanel, Thibaudeau

Excused: Senator McCaslin

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### 2003 1st Special Session

Chamber: HOUSE  
Bill No.: 2E2SHB 1336

Description: FINAL PASSAGE  
Item No.: 6  
Transcript No.: 25  
Date: 06-05-2003

Yeas: 73 Nays: 24 Absent: 00 Excused: 01

Voting  
yea: Representatives Alexander, Anderson, Armstrong, Bailey, Benson, Berkey, Boldt, Cairnes, Campbell, Carrell, Chandler, Clements, Clibborn, Cody, Conway, Cooper, Crouse, Darneille, DeBolt, Delvin, Dunshee, Edwards, Eickmeyer, Ericksen, Flannigan, Fromhold, Gombosky, Grant, Haigh, Hankins, Hunt, Hunter, Jarrett, Kagi, Kessler, Kirby, Lantz, Linville, Lovick, Mastin, McDermott, McDonald, McIntire, McMahan, McMorris, Miloscia, Moeller, Morris, Murray, Newhouse, Nixon, O'Brien, Pettigrew, Pflug, Priest, Quall, Rockefeller, Romero, Ruderman, Santos, Schindler, Sehlin, Shabro, Skinner, Sommers, Sullivan, Talcott, Tom, Upthegrove, Wallace, Wood, Woods, and Mr. Speaker

Voting  
nay: Representatives Ahern, Blake, Buck, Bush, Chase, Condotta, Cox, Dickerson, Hatfield, Hinkle, Holmquist, Hudgins, Kenney, Kristiansen, McCoy, Mielke, Morrell, Orcutt, Pearson, Schoesler, Schual-Berke, Simpson, Sump, Voloria

Excused: Representative Roach

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### 2003 1st Special Session

Chamber: SENATE  
Bill No.: 2E2SHB 1336  
Description: 3RD READING & FINAL PASSAGE  
Item No.: 11  
Transcript No.: 30  
Date: 06-10-2003

Yeas: 31 Nays: 13 Absent: 00 Excused: 05

Voting  
yea: Senators Benton, Brandland, Carlson, Doumit, Eide, Esser, Finkbeiner, Hale, Hargrove, Haugen, Hewitt, Honeyford, Horn, Johnson, Kastama, Morton, Mulliken, Oke, Parlette, Poulsen, Rasmussen, Regala, Roach, Rossi, Schmidt, Sheahan, Sheldon, B., Sheldon, T., Stevens, Swecker, Winsley

Voting  
nay: Senators Brown, Fairley, Franklin, Fraser, Jacobsen, Keiser, Kline, Kohl-Welles, McAuliffe, Prentice, Reardon, Spanel, Thibaudeau

Excused: Senators Deccio, McCaslin, Shin, West, Zarelli

## **SECOND ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1338**

*Providing additional certainty for municipal water rights*

### **PROGRAM/AGENCY IMPACTS**

#### General Provisions

This legislation expands the definition of “municipal water supplier” and “municipal water supply purposes” in a manner that includes many existing large and small water suppliers. The primary effect of this change is that the water rights held by those entities prospectively redefined as municipal are no longer subject to the relinquishment statute (for non-use). The bill also broadens the types of end-uses of municipal water to include water for various environmental purposes.

The bill establishes that a municipal water supply right is not limited as to the number of service connections or population to be served if the right is covered by a water system plan that addresses the number of allowed service connections or population to be served. Additionally, the service area boundaries described in a water system plan or small water system management program shall be considered to be the place of use for the system’s water rights provided the right holder is in compliance with the terms of the plan and the service area is consistent with applicable land use and watershed plans.

The bill allows for the transfer and use of unperfected water rights for municipal water supply under certain specified conditions.

Municipal water suppliers are required to implement cost-effective water conservation as part of an approved water system plan or small water system management program.

#### Program Impacts

The bill requires the Department of Ecology (Department) to amend qualifying water right documents to change the purpose of use to municipal supply upon the request of a water right holder.

The Department is prohibited from revoking or diminishing a water right certificate for municipal water supply purposes except in the case of ministerial error or misrepresentation. After the effective date of the act, the Department must only issue water right certificates for the perfected portion of a water right as demonstrated by actual beneficial use.

The Department is required to participate on an advisory committee to advise the Department of Health regarding that agency's mandated development of conservation requirements. The Department will also be consulted by the Department of Health regarding new water system plans and plan updates.

The bill requires the Department to prioritize the expenditure of funds or other resources for programs related to streamflow restoration in watersheds where the exercise of inchoate (previously unused) water rights may have a larger effect on streamflows and other water uses.

The bill allows the Department, on a pilot project basis, to enter into agreements with one or more municipal water suppliers in Water Resource Inventory Area 1, the Nooksack River Basin, to meet the objectives of a watershed plan for that watershed.

## **RESOURCE IMPACTS**

The extent of the impact on program resources is not fully known at this time. Factors that will drive the impact include the following:

- consultations with the Department of Health and stakeholders;
- service demand - how quickly existing municipal water suppliers and newly defined municipal suppliers will request service ; and
- legal issues - whether or not rule making is needed and other legal considerations.

No new resources or staff were provided to the Department to implement the bill. The additional work will be accomplished by shifting work priorities of existing staff. The Department also expects that certain provisions of the bill may reduce workload by making it unnecessary for municipal water suppliers to file certain water right applications and may make processing of some of their previously filed applications unnecessary.

The Department will assign existing staff to participate in the Department of Health advisory group for water conservation. Existing regional office water rights staff will be responsible for responding to requests from municipal water suppliers to update the purpose of use and other parameters of their water rights. The Department does not have sufficient resources to review existing water rights for newly-identified or existing municipal water suppliers on an immediate and wholesale basis. Instead, the Department expects to stage the work over a period of years by relying on the suppliers themselves to identify such rights. The Department will then make such determinations as they come before it for review. Such reviews will identify which water rights need to be changed as to purpose of use and to review pending applications to determine which may have been obviated by the new law.

## WORK PLAN

The Department is working with staff from the Department of Health and stakeholders to identify and resolve key points of uncertainty in the bill. This will allow the Department to more fully develop a strategy for implementation of the major provisions of the bill.

Requests from municipal water suppliers to change their existing water rights will be processed by staff of the regional offices. The Department intends to prioritize its responses to requests for changes to those water rights based on such factors as whether or not the supplier is located in a critical fish basin or has a significant inchoate component to its water rights. Absent specific requests from suppliers, the Department intends to make use of the water system planning process, administered by the Department of Health, as the vehicle for making the changes to the water rights held by municipal water suppliers. That process operates on a six-year cycle, when water suppliers produce updates to their water system plans that identify their new service areas and other elements that will now define the extent of their water rights. This six-year cycle also coincides with the growth management planning cycle.

The Department of Health has announced that it intends to use its Water Supply Advisory Committee to develop the required water use efficiency rules. Ecology is already represented on that committee; the same staff, with assistance as necessary, will participate in the water use efficiency effort.

Administration of the remaining portions of the bill that affect the Department will be done by existing regional office staff.

**Contact person:** Doug McChesney – Water Resources Program;  
**Phone:** 360/407-6647; **E-mail:** [dmmc461@ecy.wa.gov](mailto:dmmc461@ecy.wa.gov)

# FINAL BILL REPORT

## 2E2SHB 1338

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**C 5 L 03**

Synopsis as Enacted

**Brief Description:** Providing additional certainty for municipal water rights.

**Sponsors:** By House Committee on Appropriations (originally sponsored by Representatives Linville, Kirby, Lantz, Rockefeller, Shabro, Jarrett, Grant, Quall, Hunt, Delvin, Wallace, Woods, Benson, Morris and Conway; by request of Governor Locke).

**House Committee on Agriculture & Natural Resources**

**House Committee on Appropriations**

**Senate Committee on Natural Resources, Energy & Water**

### **Background:**

Water Rights. A water right has several elements or conditions that identify limitations on the use of water under the right. One is its priority. Other elements of the water right include: the amount of water that may be withdrawn from a particular water source under the right, the time of year and point from which the water may be withdrawn, the type of water use authorized under the right (such as an agricultural or municipal use), and the place that the water may be used.

In the past, many water right certificates were issued by the State for municipal use once the main withdrawal and distribution works had been constructed for using the water, but before all of the water was actually put to use. Under this "pumps and pipes" philosophy, a municipality could develop its actual use over time, without affecting its certificated water right. In a recent case involving the water right of a private developer, the State's Supreme Court stated that a final water right certificate may not be issued for the developer's right for a quantity of water that has not actually been put to beneficial use. The Court stated that it declined to address issues concerning municipal water suppliers in the context of the case. However, in a draft policy that the Department of Ecology (DOE) circulated and subsequently withdrew, the DOE stated its conclusion that the holdings of the Court in the case apply to all water rights, including municipal water rights.

Transfers. Certain elements or conditions of a water right may be modified with the approval of the DOE either directly or through its review of the decision of a water conservancy board. These modifications are referred to in the water codes as transfers, changes, and amendments. They are referred to here collectively



as "transfers." Where a county or counties have created a water conservancy board, the board may process applications for transfers and may act on the applications. A board's decision regarding an application is subject to approval by the DOE. Approving a transfer does not affect the priority date of the right. The transfer cannot be approved if it would impair other existing water rights, whether junior or senior.

Watershed Planning. The Water Resources Act (Act) directs the DOE to develop a comprehensive state water resources program for making decisions on future water resource allocation and use. The Act permits the DOE to develop the program in segments. Under the Act, the DOE has divided the state into 62 water resource inventory areas (WRIAs). The watershed planning law enacted in 1998 establishes a process for the development of watershed plans under a locally initiated planning process. Such watershed planning may be initiated for a single WRIA or for a multi-WRIA area.

Water System Plans. The State Board of Health is directed by state law to adopt rules regarding public water supply systems. Under these rules, certain public water systems are required to submit water system plans or small water system management programs to the Department of Health (DOH) for review and approval. Other law requires the development of coordinated water system plans for critical water supply areas.

## **Summary:**

Water Rights for Municipal Supplies. A water right represented by a water right certificate issued in the past for municipal water supply purposes once works for diverting or withdrawing and distributing water were constructed, rather than after the water had been placed to actual beneficial use, is declared to be in good standing. However, from now on, the DOE must issue a water right certificate for a new water right only for the perfected portion of the right as demonstrated through the actual beneficial use of water. The DOE must not revoke or diminish any water right certificate held for municipal water supply purposes unless the certificate was issued with ministerial errors or through misrepresentation, and then only to the extent of the errors or misrepresentation. This prohibition does not apply to the DOE's fulfilling its responsibilities to issue certificates at the conclusion of a general adjudication proceeding or following the change, transfer, or amendment of a water right.

A water right that is held for "municipal water supply purposes" is defined for the water code. It is a beneficial use of water: for residential purposes through 15 or more residential service connections or for a nonresidential population that is, on average, at least 25 people for at least 60 days a year; for governmental or governmental proprietary purposes by certain units of local government; or indirectly for either of these purposes through the delivery of treated or raw water to a public water system. If an entity's use of water satisfies any of these criteria,

its other beneficial uses of water generally associated with the use of water within a municipality are also uses for municipal water supply purposes. When requested by a municipal water supplier or when processing a change or amendment to a right, the DOE must amend the water right documents and related records to ensure that municipal supply purpose rights are correctly identified.

The use of water that has been diverted or withdrawn for municipal water supply purposes may also include uses that: benefit fish and wildlife, water quality, or other instream resources or related habitat; or are needed to implement environmental obligations called for by an approved watershed plan, by a federal hydropower license, by a habitat conservation plan prepared in response to a listing of a species as being threatened or endangered under the federal Endangered Species Act, or by a comprehensive irrigation district management plan.

Hook Ups; Population Served; Place of Use. Information in an application or subsequent water right document for a water right for municipal water supplies regarding the number of hookups or the population to be served under the right does not limit the exercise of the right regarding the hookups or population if: the municipal supplier has a water system plan approved by the DOH or has the approval of the DOH to serve a specified number of service connections; and water service to the hookups or population served is consistent with the plan or DOH approval.

The effect of the DOH's approval of a planning or engineering document that describes a municipal water supplier's service area, or the local legislative authority's approval of service area boundaries under a coordinated water system plan, is that any part of the service area that had been outside of the place of use for the water right involved becomes part of the water right's place of use. This applies if the supplier is in compliance with the terms of its water system plan or small water system management program, including those regarding water conservation, and adding the area to the place of use under the right is not inconsistent with the applicable comprehensive plans, land use plans or development regulations of cities, towns, or counties or with an approved watershed plan for the area.

Conservation Requirements. The DOH must develop conservation planning requirements which ensure that municipal water suppliers: implement programs to integrate conservation with water system operation and management; and identify how to fund and implement conservation activities. It must review its current conservation planning guidelines and include those elements that are appropriate for rules. These requirements apply to all municipal water suppliers; they must be tailored to be appropriate to system size, forecasted system demand, and system supply characteristics. Conservation planning requirements must include the: selection of cost-effective measures to achieve a

system's water conservation objectives; evaluation of the feasibility of adopting and implementing water delivery rate structures that encourage water conservation; evaluation of the system's water distribution system leakage and an identification of any steps necessary for achieving DOH's leakage standards; collection and reporting of water consumption, source production, and water purchase data and the frequency for reporting such information; and establishment of minimum requirements for water demand forecast methodologies.

The DOH must also develop water distribution system leakage standards. It must institute a graduated system of requirements based on levels of water system leakage, but must not require less than 10 percent leakage for the total system's supply. The DOH must establish minimum requirements for water conservation performance reporting which must include: the adoption in a public forum and achievement of water conservation goals by suppliers; the adoption of implementation schedules; a public reporting system for regular reviews of conservation performance against adopted goals; and requirements for modifying plans if conservation goals are not being met. If a municipal water supplier determines that further reductions in consumption are not reasonably achievable, it must identify how current consumption levels will be maintained. The DOH must adopt implementing rules by December 31, 2005, and must establish a compliance process that incorporates a graduated approach employing the full range of compliance mechanisms.

The DOH must establish an advisory committee to assist it in developing rules for water use efficiency, including conservation planning, distribution leakage standards, and conservation reporting requirements. The agency must provide technical assistance upon request to municipal water suppliers and local governments regarding water conservation, which may include development of best management practices for water conservation programs, landscape ordinances, rate structures for public water systems, and public education programs regarding water conservation.

Before DOH's new conservation rules take effect, a municipal supplier must continue to meet DOH's existing conservation requirements and must continue to implement its current conservation programs.

A municipal supplier with 1,000 or more service connections must, in preparing its regular water system plan updates, describe its conservation measures, the improvements in efficiency resulting from the conservation measures in the last six years, and projected effects of conservation on delaying its use of inchoate water rights before it may divert or withdraw additional inchoate (as yet unused) water. This requirement must be taken into consideration by the DOE when it establishes or extends a construction schedule under a water right permit. The time-lines and interim milestones in a detailed watershed implementation plan (required by Second Engrossed Second Substitute House Bill 1336) must

address the planned future use of existing water rights for municipal water supply purposes that are inchoate. In doing so, it must address how these rights will be used to meet the projected future needs identified in the watershed plan and how the use of these rights will be addressed when implementing instream flow strategies identified in the watershed plan.

The DOE must prioritize the use of its funds and resources related to streamflow restoration in watersheds where the use of inchoate water rights may have a larger effect on stream flows and other water uses.

Funding. The DOH is authorized to charge municipal suppliers an annual fee of 25 cents per residential connection or its equivalent until June 30, 2007, to provide funding for conservation activities.

Approving Plans; Duty to Provide Retail Service. In approving the water system plan of public water system, the DOH must ensure that water service under the plan for any new industrial, commercial, or residential use is consistent with the requirements of comprehensive plans, land use plans, or development regulations. A municipal water supplier has a duty to provide retail water service within its retail service area if: its service can be available in a timely and reasonable manner; the supplier has sufficient water rights to provide the service; the supplier has sufficient capacity to serve the water in a safe and reliable manner as determined by the DOH; and it is consistent with the requirements of any applicable comprehensive plan, development regulations, or land use plan adopted by a city, town, or county for the service area. For water service by the water utility of a city or town, the service must also be consistent with the utility service extension ordinances of the city or town. The DOH must annually compile lists of water system plans to be reviewed in the next year and consult with certain other state agencies to identify watersheds where further coordination between system planning and watershed planning is needed and must develop a work plan to accomplish that coordination.

Wastewater Plans. Certain opportunities for water reclamation and reuse under the reclaimed water laws must be evaluated in the development of water system plans. This requirement does not apply to plans for serving less than 1,000 hookups.

Sewer plans must include an analysis of the impact of water conservation measures on sewer treatment capacity. They must include a description of its coordination with any reclaimed water elements of a regional water supply plan.

Transferring Inchoate Municipal Water Rights. The right to use water under an unperfected surface water right held for municipal water supply purposes may be changed or transferred for any purpose if: (1) the supplier is in compliance with the terms of an approved water system plan or small water system management program, including those regarding water conservation. If the recipient of the water is a water supply system, the receiving system must also be in compliance

with the terms of its approved plan or program; (2) instream flows have been established by rule for the water resource inventory area that is the source of the water for the transfer or change; (3) a comprehensive watershed plan has been approved for the water resource inventory area and a detailed implementation plan (that satisfies the requirements of 2E2SHB 1336) has been completed; and (4) stream flows that satisfy the instream flow requirements, or the milestones for satisfying those instream flows that are identified in the detailed implementation plan for the watershed, are being met.

If these criteria are not satisfied, the unperfected part of the right may nonetheless be changed or transferred if the change or transfer: is subject to stream flow protection or restoration requirements of an approved habitat conservation plan or a federal hydropower license; is subject to instream flow requirements or agreements and the water right from which it is changed or transferred is also subject to such requirements or agreements; or is needed to resolve or alleviate a public health or safety emergency caused by a failing public water supply system. The criteria for such a failing system are listed and do not include inadequate water rights to serve existing or future hookups.

Watershed Agreements. On a pilot project basis, the DOE may enter into watershed agreements with a municipal water supplier to meet the objectives of a watershed plan that has been approved or is under development. The pilot project is to be conducted in water resource inventory area number one, with the consent of the governments that initiated watershed planning for the watershed. The agreements are for not more than 10 years, but may be renewed. They must be originally entered into before July 1, 2008. An agreement must be consistent with: adopted growth management plans developed under the Growth Management Act; approved water supply plans; adopted watershed plans; and the water use efficiency and conservation requirements of the DOH or those of an approved watershed plan, whichever are more stringent. An agreement must require the participating water system to meet obligations under an approved watershed plan; must establish performance measures and time lines and annual reporting regarding them; and provide for stream flow monitoring and metering of water use, as needed to ensure compliance. An agreement is appealable to the Pollution Control Hearings Board within 30 days of being approved by the DOE. The DOE must report to the Legislature regarding the pilot project before the end of 2003 and 2004.

#### **Votes on Final Passage:**

House     57 40

#### First Special Session

House     83 14

Senate    33 11

**Effective:** September 9, 2003

## Roll Calls on a Bill: 1338 (2003-04)

Brief Description: Providing additional certainty for municipal water rights.

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### 2003 Regular Session

Chamber: HOUSE  
Bill No.: 2E2SHB 1338  
Description: 279 CHANDLER PG 5 LN 34  
Item No.: 29  
Transcript No.: 65  
Date: 03-18-2003

Yeas: 47 Nays: 50 Absent: 00 Excused: 01

Voting Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Benson,  
yea: Blake, Boldt, Buck, Bush, Cairnes, Campbell, Carrell, Chandler, Clements,  
Condotta, Cox, Crouse, DeBolt, Delvin, Ericksen, Hatfield, Hinkle,  
Holmquist, Jarrett, Kristiansen, Mastin, McDonald, McMahan, McMorris,  
Mielke, Newhouse, Nixon, Orcutt, Pearson, Pflug, Priest, Roach,  
Schindler, Schoesler, Sehlin, Shabro, Skinner, Sump, Talcott, Tom,  
Woods

Voting Representatives Berkey, Chase, Clibborn, Cody, Conway, Cooper,  
nay: Darneille, Dickerson, Dunshee, Eickmeyer, Flannigan, Fromhold,  
Gombosky, Grant, Haigh, Hankins, Hudgins, Hunt, Hunter, Kagi, Kenney,  
Kessler, Kirby, Lantz, Linville, Lovick, McCoy, McDermott, McIntire,  
Miloscia, Moeller, Morrell, Morris, Murray, O'Brien, Pettigrew, Quall,  
Rockefeller, Romero, Ruderman, Santos, Schual-Berke, Simpson,  
Sommers, Sullivan, Upthegrove, Voloria, Wallace, Wood, and Mr.  
Speaker

Excused: Representative Edwards

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### 2003 Regular Session

Chamber: HOUSE  
Bill No.: 2E2SHB 1338  
Description: 269 CHANDLER PG 7 LN 22  
Item No.: 30  
Transcript No.: 65  
Date: 03-18-2003

Yeas: 47 Nays: 50 Absent: 00 Excused: 01

Voting  
yea: Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Benson, Blake, Boldt, Buck, Bush, Cairnes, Campbell, Carrell, Chandler, Clements, Condotta, Cox, Crouse, DeBolt, Delvin, Ericksen, Hatfield, Hinkle, Holmquist, Jarrett, Kristiansen, Mastin, McDonald, McMahan, McMorris, Mielke, Newhouse, Nixon, Orcutt, Pearson, Pflug, Priest, Roach, Schindler, Schoesler, Sehlin, Shabro, Skinner, Sump, Talcott, Tom, Woods

Voting  
nay: Representatives Berkey, Chase, Clibborn, Cody, Conway, Cooper, Darneille, Dickerson, Dunshee, Eickmeyer, Flannigan, Fromhold, Gombosky, Grant, Haigh, Hankins, Hudgins, Hunt, Hunter, Kagi, Kenney, Kessler, Kirby, Lantz, Linville, Lovick, McCoy, McDermott, McIntire, Miloscia, Moeller, Morrell, Morris, Murray, O'Brien, Pettigrew, Quall, Rockefeller, Romero, Ruderman, Santos, Schual-Berke, Simpson, Sommers, Sullivan, Upthegrove, Voloria, Wallace, Wood, and Mr. Speaker

Excused: Representative Edwards

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### 2003 Regular Session

Chamber: HOUSE  
Bill No.: 2E2SHB 1338  
Description: 270 CHANDLER PG 12 LN 26  
Item No.: 31  
Transcript No.: 65  
Date: 03-18-2003

Yeas: 97 Nays: 00 Absent: 00 Excused: 01

Voting  
yea: Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Benson, Berkey, Blake, Boldt, Buck, Bush, Cairnes, Campbell, Carrell, Chandler, Chase, Clements, Clibborn, Cody, Condotta, Conway, Cooper, Cox, Crouse, Darneille, DeBolt, Delvin, Dickerson, Dunshee, Eickmeyer, Ericksen, Flannigan, Fromhold, Gombosky, Grant, Haigh, Hankins, Hatfield, Hinkle, Holmquist, Hudgins, Hunt, Hunter, Jarrett, Kagi, Kenney, Kessler, Kirby, Kristiansen, Lantz, Linville, Lovick, Mastin, McCoy, McDermott, McDonald, McIntire, McMahan, McMorris, Mielke, Miloscia, Moeller, Morrell, Morris, Murray, Newhouse, Nixon, O'Brien, Orcutt, Pearson, Pettigrew, Pflug, Priest, Quall, Roach, Rockefeller, Romero, Ruderman, Santos, Schindler, Schoesler, Schual-Berke, Sehlin, Shabro, Simpson, Skinner, Sommers, Sullivan, Sump, Talcott, Tom, Upthegrove, Voloria, Wallace, Wood, Woods, and Mr. Speaker

Excused: Representative Edwards

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## 2003 Regular Session

Chamber: HOUSE  
Bill No.: 2E2SHB 1338  
Description: FINAL PASSAGE  
Item No.: 32  
Transcript No.: 65  
Date: 03-18-2003

Yeas: 57 Nays: 40 Absent: 00 Excused: 01

Voting Representatives Berkey, Cairnes, Chase, Clibborn, Cody, Conway,  
yea: Cooper, Darneille, Dickerson, Dunshee, Eickmeyer, Flannigan, Fromhold,  
Gombosky, Grant, Haigh, Hankins, Hudgins, Hunt, Hunter, Jarrett, Kagi,  
Kenney, Kirby, Kristiansen, Lantz, Linville, Lovick, McCoy, McDermott,  
McDonald, McIntire, Miloscia, Moeller, Morrell, Morris, Murray, Nixon,  
O'Brien, Pearson, Pettigrew, Priest, Quall, Rockefeller, Romero,  
Ruderman, Santos, Shabro, Simpson, Sommers, Sullivan, Tom, Voloria,  
Wallace, Wood, Woods, and Mr. Speaker

Voting Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Benson,  
nay: Blake, Boldt, Buck, Bush, Campbell, Carrell, Chandler, Clements,  
Condotta, Cox, Crouse, DeBolt, Delvin, Ericksen, Hatfield, Hinkle,  
Holmquist, Kessler, Mastin, McMahan, McMorris, Mielke, Newhouse,  
Orcutt, Pflug, Roach, Schindler, Schoesler, Schual-Berke, Sehlin, Skinner,  
Sump, Talcott, Upthegrove

Excused: Representative Edwards

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## 2003 1st Special Session

Chamber: HOUSE  
Bill No.: 2E2SHB 1338  
Description: FINAL PASSAGE  
Item No.: 7  
Transcript No.: 25  
Date: 06-05-2003

Yeas: 83 Nays: 14 Absent: 00 Excused: 01

Voting Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Benson,  
yea: Berkey, Blake, Boldt, Buck, Bush, Cairnes, Campbell, Carrell, Chandler,  
Clements, Clibborn, Cody, Condotta, Conway, Cox, Crouse, Darneille,  
DeBolt, Delvin, Dunshee, Edwards, Eickmeyer, Ericksen, Flannigan,  
Fromhold, Gombosky, Grant, Haigh, Hankins, Hatfield, Hinkle, Holmquist,  
Hunter, Jarrett, Kagi, Kenney, Kessler, Kirby, Kristiansen, Lantz, Linville,  
Lovick, Mastin, McDermott, McDonald, McIntire, McMahan, McMorris,



Mielke, Miloscia, Moeller, Morris, Newhouse, Nixon, O'Brien, Orcutt, Pearson, Pettigrew, Pflug, Priest, Quall, Rockefeller, Ruderman, Santos, Schindler, Schoesler, Sehlin, Shabro, Skinner, Sommers, Sullivan, Sump, Talcott, Tom, Veloria, Woods, and Mr. Speaker

Voting Representatives Chase, Cooper, Dickerson, Hudgins, Hunt, McCoy,  
nay: Morrell, Murray, Romero, Schual-Berke, Simpson, Upthegrove, Wallace,  
Wood

Excused: Representative Roach

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### 2003 1st Special Session

Chamber: SENATE  
Bill No.: 2E2SHB 1338  
Description: 486 FRASER PG 19 LN 32  
Item No.: 12  
Transcript No.: 30  
Date: 06-10-2003

Yeas: 19 Nays: 25 Absent: 00 Excused: 05

Voting Senators Brown, Doumit, Eide, Fairley, Franklin, Fraser, Jacobsen,  
yea: Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, Poulsen, Prentice,  
Reardon, Regala, Sheldon, B., Spanel, Thibaudeau

Voting Senators Benton, Brandland, Carlson, Esser, Finkbeiner, Hale, Hargrove,  
nay: Haugen, Hewitt, Honeyford, Horn, Johnson, Morton, Mulliken, Oke,  
Parlette, Rasmussen, Roach, Rossi, Schmidt, Sheahan, Sheldon, T.,  
Stevens, Swecker, Winsley

Excused: Senators Deccio, McCaslin, Shin, West, Zarelli

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### 2003 1st Special Session

Chamber: SENATE  
Bill No.: 2E2SHB 1338  
Description: 3RD READING & FINAL PASSAGE  
Item No.: 13  
Transcript No.: 30  
Date: 06-10-2003

Yeas: 33 Nays: 11 Absent: 00 Excused: 05

Voting Senators Benton, Brandland, Carlson, Doumit, Eide, Esser, Finkbeiner,  
yea: Hale, Hargrove, Haugen, Hewitt, Honeyford, Horn, Jacobsen, Johnson,  
Kastama, Kohl-Welles, Morton, Mulliken, Oke, Parlette, Poulsen, Prentice,  
Rasmussen, Roach, Rossi, Schmidt, Sheahan, Sheldon, B., Sheldon, T.,

Stevens, Swecker, Winsley  
Voting Senators Brown, Fairley, Franklin, Fraser, Keiser, Kline, McAuliffe,  
nay: Reardon, Regala, Spanel, Thibaudeau  
Excused: Senators Deccio, McCaslin, Shin, West, Zarelli

## HOUSE BILL 1526

*Revising provisions relating to cost-reimbursement agreements between state agencies and permit applicants*

### PROGRAM/AGENCY IMPACTS

This new law:

- extends the legislative authorization allowing the departments of Ecology, Natural Resources, Health, Fish and Wildlife, and local air pollution control authorities to enter into voluntary cost-reimbursement agreements with applicants seeking permits to July 1, 2007 (from previous date of July 1, 2005); and
- opens the cost-reimbursement option to all applicants (as opposed to previous allowance being restricted to only water rights permit processing or projects requiring environmental impact statements).

### RESOURCE IMPACTS

No new resources were provided to Ecology to implement HB 1526.

### WORK PLAN

Statutory modifications made to Ecology's authority to enter into cost-reimbursement arrangements served to broaden the universe of applicants eligible to seek out and enter into such arrangements, as well as served to extend the time-period for use of this new tool. Ecology supports these changes, and will work in the weeks and months ahead to increase external awareness of the broadened tool. More specifically, Ecology will update previous marketing materials, contract instruments, web-based information, as well as will work with the Department of General Administration (GA) to update and refresh their Environmental Consulting Services pool (next scheduled updating by 9/24/03). GA website at <http://www.ga.wa.gov/servlet/PCAContractDetailSv?contnbr=30700> provides overview of this specialty contracting pool.

**Contact Person:** Please contact either of the following for more information:

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# FINAL BILL REPORT

## HB 1526

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### C 70 L 03

#### Synopsis as Enacted

**Brief Description:** Revising provisions relating to cost-reimbursement agreements between state agencies and permit applicants.

**Sponsors:** By Representatives Linville, Armstrong, Haigh, Morris, Cooper, Mastin, Gombosky, Delvin, Grant, Schoesler, Sullivan, Chandler and Schual-Berke.

**House Committee on Fisheries, Ecology & Parks**  
**Senate Committee on Natural Resources, Energy & Water**

#### **Background:**

Cost-reimbursement agreements allow an applicant for a state or local government permit or lease to provide funds for the staff necessary to process the required application in a timely manner. Voluntary cost-reimbursement agreements may be negotiated between applicants for complex permits and the departments of Ecology, Natural Resources, Health, Fish and Wildlife, and local air pollution control authorities. The Department of Natural Resources may also use these agreements for any lease application except aquatic leases. A complex permit is defined as a permit which requires an environmental impact statement.

Under a cost-reimbursement agreement, the applicant pays the reasonable costs incurred by the agency or local pollution control authority for permit coordination, environmental review, application review, technical studies, permit processing, and compliance with requirements of other relevant laws. The agreement must identify the specific tasks, costs, and schedule for work to be conducted. Funds under a cost-reimbursement agreement are used by the agency to contract with independent consultants to carry out the work covered by the agreement. The funds may also be used to assign current staff to review the consultants' work and to provide necessary technical assistance when an independent consultant with comparable technical skills is unavailable.

No new cost-reimbursement agreement may be negotiated after July 1, 2005. An agency may continue to administer any cost-reimbursement agreement which was entered into before July 1, 2005, until the project is completed.

**Summary:**

The deadline for entering into voluntary cost-reimbursement agreements between applicants for permits and the departments of Ecology, Natural Resources, Health, Fish and Wildlife, and local air pollution control authorities is extended from July 1, 2005, to July 1, 2007.

Provisions that only complex projects requiring an environmental impact statement qualify for cost-reimbursement agreements are repealed.

**Votes on Final Passage:**

House	94 0
Senate	49 0

**Effective:** July 27, 2003

### **Roll Calls on a Bill: 1526 (2003-04)**

Brief               Revising provisions relating to cost-reimbursement agreements  
Description:      between state agencies and permit applicants.

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#### **2003 Regular Session**

Chamber:       HOUSE  
Bill No.:       HB 1526  
Description:    FINAL PASSAGE  
Item No.:       17  
Transcript No.: 62  
Date:           03-15-2003

Yeas: 94 Nays: 00 Absent: 00 Excused: 04

Voting   Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Benson,  
yea:      Berkey, Blake, Buck, Bush, Cairnes, Campbell, Carrell, Chandler, Chase,  
          Clements, Clibborn, Cody, Condotta, Conway, Cooper, Cox, Crouse,  
          Darneille, DeBolt, Delvin, Dickerson, Dunshee, Eickmeyer, Ericksen,  
          Flannigan, Fromhold, Gombosky, Grant, Haigh, Hankins, Hatfield, Hinkle,  
          Holmquist, Hudgins, Hunt, Hunter, Jarrett, Kagi, Kenney, Kessler, Kirby,  
          Kristiansen, Lantz, Linville, Lovick, McCoy, McDermott, McDonald,  
          McIntire, McMahan, McMorris, Miloscia, Moeller, Morrell, Morris, Murray,  
          Newhouse, Nixon, O'Brien, Orcutt, Pearson, Pettigrew, Pflug, Priest,  
          Quall, Roach, Rockefeller, Romero, Ruderman, Santos, Schindler,  
          Schoesler, Schual-Berke, Sehlin, Shabro, Simpson, Skinner, Sommers,  
          Sullivan, Sump, Talcott, Tom, Upthegrove, Veloria, Wallace, Wood,  
          Woods, and Mr. Speaker

Excused: Representatives Boldt, Edwards, Mastin, Mielke

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#### **2003 Regular Session**

Chamber:       SENATE  
Bill No.:       HB 1526  
Description:    3RD READING & FINAL PASSAGE  
Item No.:       9  
Transcript No.: 88  
Date:           04-10-2003

Yeas: 49 Nays: 00 Absent: 00 Excused: 00

Voting   Senators Benton, Brandland, Brown, Carlson, Deccio, Doumit, Eide, Esser,  
yea:      Fairley, Finkbeiner, Franklin, Fraser, Hale, Hargrove, Haugen, Hewitt,  
          Honeyford, Horn, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles,

McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Poulsen, Prentice, Rasmussen, Reardon, Regala, Roach, Rossi, Schmidt, Sheahan, Sheldon, B., Sheldon, T., Shin, Spanel, Stevens, Swecker, Thibaudeau, West, Winsley, Zarelli





## **SUBSTITUTE HOUSE BILL 1550**

*Revising the duties of and renaming the office of permit assistance*

### **PROGRAM/AGENCY IMPACTS**

This new law:

- renames the State Office of Permit Assistance (established by the Legislature in 2002) to the Office of Regulatory Assistance (ORA);
- requires that a director for ORA be hired no later than June 1, 2003;
- directs ORA to coordinate with state agencies to develop an office web site (linked through the Office of Governor web site) that contains information about regulatory requirements for businesses and citizens of Washington and provide information or links to information on:
  - federal, state, and local rule-making processes and permit requirements applicable to Washington businesses and citizens;
  - federal, state, and local licenses, permits, and approvals necessary to start and operate a business or develop real property in Washington;
  - state and local building codes;
  - federal, state, and local economic development programs available to businesses in Washington; and
  - state and local agencies regulating or providing assistance to citizens and businesses operating a business or developing real property in Washington.

### **RESOURCE IMPACTS**

No new resources were provided to Ecology to implement SHB 1550.

### **WORK PLAN**

While SHB 1550 is not an Ecology measure per se, nor a measure for which Ecology received new or additional resources, it is a measure Ecology strongly supports and will work in close partnership with ORA to implement. More specifically, as Ecology pursues its own internal initiatives to provide the regulated community with clearer and more comprehensive permitting and regulatory information (e.g., via comprehensive web-based presentations of permitting and regulatory information, descriptions, flowcharts, applications, timeframes, etc.), Ecology will work to ensure its activities are coordinated with those of ORA.

Accordingly, Ecology will work in the weeks and months ahead to ensure its regulatory streamlining and web-oriented assistance activities are optimally aligned and in sync with ORA's overall direction and leadership. Ecology will update its "*Working With You*" and "*Transforming Ecology*" initiatives as appropriate to reflect this alignment (see [http://www.ecy.wa.gov/quality/service/svc\\_index.htm](http://www.ecy.wa.gov/quality/service/svc_index.htm)).

**Contact Person:** Please contact either of the following for more information:

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# FINAL BILL REPORT

## SHB 1550

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### C 71 L 03

#### Synopsis as Enacted

**Brief Description:** Revising the duties of and renaming the office of permit assistance.

**Sponsors:** By House Committee on State Government (originally sponsored by Representatives Linville, Armstrong, Haigh, Buck, Schual-Berke, McDermott and Conway).

**House Committee on State Government**  
**Senate Committee on Government Operations & Elections**

#### **Background:**

The Permit Assistance Center (PAC) was created in 1995 in the Department of Ecology (DOE) to provide the public with information regarding environmental permitting laws and assistance to businesses and public agencies in complying with these laws. In addition to other requirements, the PAC was directed to develop and provide a coordinated state permitting procedure that project applicants could use at their option and expense and was authorized by statute to recover costs for this coordinated permit process.

Statutory provisions for the PAC were subject to a sunset review. Although the Joint Legislative Audit and Review Committee (JLARC) prepared a sunset review recommending reauthorization, the PAC's statutory provisions expired on June 30, 1999. An appropriation in the 1999-2001 Omnibus Operating budget continued funding for the PAC operations, and it continues to operate within the DOE.

In 2002 legislation was enacted to transfer the powers, duties, and functions of the DOE's PAC to a new Office of Permit Assistance (OPA) within the Office of Financial Management. The OPA provides information services and, upon request, facilitates permitting projects for a cost or at the OPA expense if it is determined it is in the public interest to do so. In addition to these responsibilities, the OPA:

- develops informal processes for dispute resolution between agencies and project applicants;
- conducts customer surveys to evaluate its effectiveness;

- reviews initiatives developed by the Transportation Permit Efficiency and Accountability Committee to determine if any would be beneficial if implemented for other projects;
- prioritizes expenditures of State General Fund money to provide services to small project applicants; and
- provides biennial reports to the Legislature on OPA performance, on any identified statutory or regulatory conflicts related to authorities and roles of permit agencies, and on use of outside independent consultants in the coordinated permit process.

The Permit Assistance Advisory Board assesses the performance of the OPA, reviews annual customer surveys to determine the OPA's effectiveness, and recommends changes to the OPA's performance.

### **Summary:**

The OPA is renamed the Office of Regulatory Assistance (ORA). A director for the ORA will be hired no later than June 1, 2003. The ORA will coordinate with state agencies to develop an office web site that is linked through the Office of the Governor's web site. The web site will contain information about regulatory requirements for businesses and citizens of Washington. The web site will also provide information or links to information on the following:

- federal, state, and local rule-making processes and permit requirements applicable to Washington businesses and citizens;
- federal, state, and local licenses, permits, and approvals necessary to start and operate a business or develop real property in Washington;
- state and local building codes;
- federal, state, and local economic development programs available to businesses in Washington; and
- state and local agencies regulating or providing assistance to citizens and businesses operating a business or developing real property in Washington.

### **Votes on Final Passage:**

House	96 0
Senate	46 0

**Effective:** July 27, 2003  
April 18, 2003 (Section 2)

### **Roll Calls on a Bill: 1550 (2003-04)**

Brief Description: Revising the duties of and renaming the office of permit assistance.

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#### **2003 Regular Session**

Chamber: HOUSE  
Bill No.: SHB 1550  
Description: FINAL PASSAGE  
Item No.: 8  
Transcript No.: 38  
Date: 02-19-2003

Yeas: 96 Nays: 00 Absent: 00 Excused: 02

Voting yea: Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Benson, Berkey, Blake, Boldt, Buck, Bush, Cairnes, Carrell, Chandler, Chase, Clements, Clibborn, Cody, Condotta, Conway, Cooper, Cox, Crouse, Darneille, DeBolt, Delvin, Dickerson, Dunshee, Edwards, Eickmeyer, Ericksen, Flannigan, Fromhold, Gombosky, Grant, Haigh, Hankins, Hatfield, Hinkle, Holmquist, Hudgins, Hunt, Hunter, Jarrett, Kagi, Kenney, Kessler, Kirby, Kristiansen, Lantz, Linville, Lovick, Mastin, McCoy, McDermott, McDonald, McIntire, McMahan, McMorris, Mielke, Miloscia, Moeller, Morrell, Morris, Murray, Newhouse, Nixon, O'Brien, Orcutt, Pearson, Pettigrew, Pflug, Priest, Quall, Roach, Rockefeller, Romero, Ruderman, Santos, Schindler, Schoesler, Sehlín, Shabro, Simpson, Skinner, Sommers, Sullivan, Sump, Talcott, Tom, Upthegrove, Veloria, Wallace, Wood, Woods, and Mr. Speaker

Excused: Representatives Campbell, Schual-Berke

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#### **2003 Regular Session**

Chamber: SENATE  
Bill No.: SHB 1550  
Description: 3RD READING & FINAL PASSAGE  
Item No.: 3  
Transcript No.: 88  
Date: 04-10-2003

Yeas: 46 Nays: 00 Absent: 01 Excused: 02

Voting yea: Senators Benton, Brandland, Brown, Carlson, Deccio, Doumit, Eide, Esser, Fairley, Franklin, Fraser, Hale, Haugen, Hewitt, Honeyford,

Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Poulsen, Prentice, Rasmussen, Reardon, Regala, Roach, Rossi, Schmidt, Sheahan, Sheldon, B., Sheldon, T., Shin, Spanel, Stevens, Swecker, Thibaudeau, West, Winsley, Zarelli

Absent: Senator Finkbeiner

Excused: Senators Hargrove, Horn

## **ENGROSSED SUBSTITUTE HOUSE BILL 1640**

*Authorizing water banking within the trust water program*

### **PROGRAM/AGENCY IMPACTS**

This bill authorizes the Department to use the trust water rights program in the Yakima River basin for water banking purposes including mitigating for water resources impacts, providing water for future needs, and documenting the transfer of water rights to and from the trust program. Under the water banking program, the Department may identify water rights to manage within the water bank and may take action on change and transfer applications for water in the bank including transferring water to third parties.

The bill requires that the Department seek input from various water stakeholders on water banking procedures and help identify areas of the state where water banking could assist in providing water for instream and out-of-stream uses. The Department is to report its findings and recommendations to appropriate legislative committees by December 31 of every even-numbered year. In addition, the report must evaluate the effectiveness of water banking under the statute and describe statutory, regulatory or other impediments to water banking in the state.

### **RESOURCE IMPACTS**

No new resources or staff were provided by the Legislature to the Department to implement the bill. The bill creates some new workload for the Department relating to establishment of the Yakima water bank and the required biennial reports to the Legislature. The bill supports work that Ecology initiated as part of its acquisition strategy in 2002. The Department has a grant of \$67,500 from the Bonneville Power Administration through the National Fish and Wildlife Foundation which is being matched in equal amount by Ecology to use in implementing the water bank. Ecology has let a consulting contract using a portion of those funds to a facilitation firm who is working with Ecology staff and the existing Yakima Basin Water Conservation Advisory Group to assist in developing recommendations for the formation of the water bank. A water bank that is being administered by an Oregon non-profit corporation, the Deschutes Resources Conservancy is being studied as a possible model.

The required inquiries and reporting to the Legislature required in the bill will be absorbed by the Department. The Department estimates that it will require about two person weeks every two years to accomplish this task at a total annualized cost of about one one-hundredth of full time equivalent position and a cost of under \$1,500.

## WORK PLAN

No rule-making or hiring is required to implement the bill. The Department has already begun a process with an existing stakeholder group to develop recommendations for the constitution of the Yakima water bank. Recommendations are due September 30, 2003.

In mid 2004, the Department will assign an existing staff person to produce a report to be submitted before December 31, 2003. Consultation with various stakeholder groups is ongoing.

**Contact:** Peggy Clifford – Water Resources Program; **Phone:** 360/407-7262;  
**E-mail:** [pcli461@ecy.wa.gov](mailto:pcli461@ecy.wa.gov)



# FINAL BILL REPORT

## ESHB 1640

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**C 144 L 03**

Synopsis as Enacted

**Brief Description:** Authorizing water banking within the trust water program.

**Sponsors:** By House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Linville, Hinkle, Grant, Chandler, Eickmeyer and Hankins).

**House Committee on Agriculture & Natural Resources**  
**Senate Committee on Natural Resources, Energy & Water**

**Background:**

The state may acquire a trust water right by donation, purchase, lease, or means other than condemnation. Trust water rights are placed in the state's trust water rights program and managed by the Department of Ecology (DOE). Two trust water rights programs, one for the Yakima River basin and the other for the rest of the state, are established in state law.

Trust water rights may be held or authorized for use for instream flows, irrigation, municipal, or other beneficial uses consistent with applicable regional plans. Trust water rights also may be used to resolve critical water supply problems. Statutory relinquishment provisions do not apply to trust water rights.

A trust water right has the same priority date as the water right from which it originated. The trust water right is junior in priority to the original right unless specified otherwise by agreement of the state and the original water right holder.

The DOE must determine that a trust water right will not impair existing water rights or the public interest before such a right may be exercised. The DOE also must stop or modify trust water right use if impairment occurs. The DOE's impairment decisions may be appealed to the Pollution Control Hearings Board.

Legislative findings in the trust water right statutes recognize the benefits of water use efficiency programs in addressing the state's water shortage for existing and future water needs. Legislative findings also address the importance of developing programs to increase the state's ability to manage state waters to resolve conflicts and satisfy water needs.

## **Summary:**

### Authority for Water Banking

The DOE may use the trust water rights program in the Yakima River basin for water banking purposes. Water banking may be used for mitigation, future water supply needs, or any statutory beneficial uses consistent with terms established by the transferor. However, return flows from water rights authorized for any purpose must remain available as part of the Yakima River Basin's total water supply available and to satisfy existing rights for other downstream uses and users. "Total water supply available" is defined for water banking purposes consistent with the 1945 consent decree between the United States and Yakima River basin water users and later court interpretations. Water banking also may be used to:

- document transfers of water rights to and from the trust water rights program;  
and
- provide a source of water rights the DOE can make available to third parties on a temporary or permanent basis for any statutory beneficial use.

The DOE may not use water banking to cause detriment or injury to existing rights, issue temporary rights for new potable uses, administer federal project rights, or allow carryover of stored water from one water year to another water year.

### Administration and Transfer of Water Rights

The DOE, with the water right holder's consent, may identify trust water rights for administration for water banking purposes. Trust water rights established before the effective date of these provisions may be included. An application to transfer must indicate stream reach or reaches where the trust water right will be established and identify reasonably foreseeable future temporary or permanent beneficial uses for the water right upon transfer from the trust water rights program. If a future place of use, period of use, or other elements of the water right are not specifically identified at the time of transfer, another review will be necessary at the time of proposed transfer from the trust water rights program.

The DOE must transfer all or part of a water right being administered for water banking purposes from the trust water rights program to a third party when all of the following have occurred:

- the DOE receives a request to transfer;
- the request is consistent with the DOE's statutory transfer review and future temporary or permanent beneficial uses;

- the request is consistent with any condition, limitation, or agreement affecting the water right, including any transfer agreement executed at the time the water right was transferred to the trust water rights program; and
- the request is accompanied by and consistent with an assignment of interest from a person or entity retaining an interest in the trust water right to the party requesting transfer.

The water right transferred from the trust water rights program for water banking purposes retains the same priority as the underlying right. The DOE must issue documentation including specified information for the transferred water right to the new water right holder. The DOE's decisions on water bank transfers may be appealed to the Pollution Control Hearings Board or a superior court conducting a general adjudication.

### Interpretation of Water Banking Provisions

The statutory water bank provisions must not be construed to cause detriment or injury to existing rights or the operation of the federal Yakima project to provide water for irrigation purposes, existing water supply contracts, or other existing water rights. These provisions also must not be construed to diminish existing rights or the total water supply available for irrigation or other purposes in the Yakima River basin, affect or modify the authority of a court conducting a general adjudication, affect or modify any person's or entity's rights under a water rights adjudication, or affect or modify any order of a court conducting a water rights adjudication. In addition, these provisions may not be construed to:

- affect or modify treaty or other federal rights of a federal agency, tribe, or other person or entity under state or federal law;
- affect or modify federal, state, or tribal, or any person's or entity's rights or jurisdiction over surface or ground water resources;
- change, interpret, or conflict with any interstate compact;
- alter, establish, or impair water or water-related rights of states, the United States, the Yakama Nation, or any other person or entity;
- affect or modify the rights of the Yakama Nation and management or regulation of water resources within the external boundaries of the Yakama Indian Reservation;
- affect or modify the settlement agreement between the United States and the State of Washington regarding federal reserved rights other than rights reserved by the United States for the Yakama Indian Nation; or
- affect or modify the rights of any federal, state, or local agency, the Yakama Nation, or any other person or entity with respect to unsettled claims in any water rights adjudication, including *State v. Acquavella*, or constitute evidence in any such proceeding.

## Reports to the Legislature

The DOE must request comments on water banking from a variety of governmental entities and interest groups and submit a report on these comments and any recommendations for legislative action to the appropriate committees of the Legislature in the subsequent legislative session. By December 31 of every even-numbered year, the DOE must report to the appropriate committees of the Legislature on water banking activities and include: (1) an evaluation of the effectiveness of water banking; (2) a description of any statutory, regulatory, or other impediments to water banking in other areas of the state; and (3) an identification of other basins or regions that may benefit from authorization to use the trust water rights program for water banking purposes.

## Legislative Findings

Legislative findings include voluntary water rights transfers and issuance of new water rights as acceptable methods to address current and future water needs. Legislative findings identify water banking as a way to facilitate voluntary water rights transfers and achieve a variety of resource management objectives.

## **Votes on Final Passage:**

House	91	5	
Senate	47	0	(Senate amended)
House	98	0	(House concurred)

**Effective:** May 7, 2003

## **Roll Calls on a Bill: 1640 (2003-04)**

Brief Description: Authorizing water banking within the trust water program.

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### **2003 Regular Session**

Chamber: HOUSE  
Bill No.: ESHB 1640  
Description: FINAL PASSAGE  
Item No.: 1  
Transcript No.: 66  
Date: 03-19-2003

Yeas: 91 Nays: 05 Absent: 00 Excused: 02

Voting Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Benson,  
yea: Berkey, Blake, Buck, Cairnes, Campbell, Carrell, Chandler, Chase,  
Clements, Clibborn, Cody, Condotta, Conway, Cooper, Cox, Darneille,  
DeBolt, Delvin, Dickerson, Dunshee, Edwards, Eickmeyer, Ericksen,  
Flannigan, Fromhold, Grant, Haigh, Hankins, Hatfield, Hinkle, Hudgins,  
Hunt, Hunter, Jarrett, Kagi, Kenney, Kessler, Kirby, Kristiansen, Lantz,  
Linville, Lovick, Mastin, McCoy, McDermott, McIntire, McMahan,  
McMorris, Mielke, Miloscia, Moeller, Morrell, Morris, Murray, Newhouse,  
Nixon, O'Brien, Orcutt, Pearson, Pettigrew, Pflug, Priest, Quall, Roach,  
Rockefeller, Romero, Ruderman, Santos, Schindler, Schoesler, Schual-  
Berke, Sehlin, Shabro, Simpson, Skinner, Sommers, Sullivan, Talcott,  
Tom, Upthegrove, Voloria, Wallace, Wood, Woods, and Mr. Speaker

Voting Representatives Boldt, Bush, Crouse, Holmquist, Sump  
nay:

Excused: Representatives Gombosky, McDonald

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### **2003 Regular Session**

Chamber: SENATE  
Bill No.: ESHB 1640  
Description: 3RD READING & FINAL PASSAGE AS AMENDED BY THE  
SENATE  
Item No.: 43  
Transcript No.: 95  
Date: 04-17-2003

Yeas: 47 Nays: 00 Absent: 01 Excused: 01

Voting Senators Benton, Brandland, Brown, Carlson, Deccio, Doumit, Eide,  
yea: Esser, Fairley, Finkbeiner, Franklin, Fraser, Hale, Haugen, Hewitt,  
Honeyford, Horn, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-  
Welles, McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Poulsen,  
Prentice, Rasmussen, Reardon, Regala, Roach, Schmidt, Sheahan,  
Sheldon, B., Sheldon, T., Shin, Spanel, Stevens, Swecker, Thibaudeau,  
West, Winsley, Zarelli

Absent: Senator Hargrove

Excused: Senator Rossi

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### 2003 Regular Session

Chamber: HOUSE

Bill No.: ESHB 1640

Description: FP AS AMD BY THE SENATE

Item No.: 11

Transcript No.: 100

Date: 04-22-2003

Yeas: 98 Nays: 00 Absent: 00 Excused: 00

Voting Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Benson,  
yea: Berkey, Blake, Boldt, Buck, Bush, Cairnes, Campbell, Carrell, Chandler,  
Chase, Clements, Clibborn, Cody, Condotta, Conway, Cooper, Cox, Crouse,  
Darneille, DeBolt, Delvin, Dickerson, Dunshee, Edwards, Eickmeyer,  
Ericksen, Flannigan, Fromhold, Gombosky, Grant, Haigh, Hankins, Hatfield,  
Hinkle, Holmquist, Hudgins, Hunt, Hunter, Jarrett, Kagi, Kenney, Kessler,  
Kirby, Kristiansen, Lantz, Linville, Lovick, Mastin, McCoy, McDermott,  
McDonald, McIntire, McMahan, McMorris, Mielke, Miloscia, Moeller, Morrell,  
Morris, Murray, Newhouse, Nixon, O'Brien, Orcutt, Pearson, Pettigrew,  
Pflug, Priest, Quall, Roach, Rockefeller, Romero, Ruderman, Santos,  
Schindler, Schoesler, Schual-Berke, Sehlin, Shabro, Simpson, Skinner,  
Sommers, Sullivan, Sump, Talcott, Tom, Upthegrove, Veloria, Wallace,  
Wood, Woods, and Mr. Speaker

## **SUBSTITUTE HOUSE BILL 1707**

*Revising environmental review provisions to improve the development approval process and enhance economic development*

### **PROGRAM/AGENCY IMPACTS**

SHB 1707 adds a section to the State Environmental Policy Act (SEPA), chapter 43.21C RCW, that allows counties and cities planning under the Growth Management Act (GMA) to establish categorical exemptions for new residential or mixed-used development, under certain circumstances. The bill also amends RCW 43.21C.240 and requires GMA cities and counties to determine that a proposed project has been adequately evaluated and mitigated under the comprehensive plan, development regulations and/or other laws.

These amendments will not directly impact Ecology, but as the agency responsible for implementation of SEPA, we should provide guidance on how to implement the amendments.

### **RESOURCE IMPACTS**

Related resource impacts will be light. Existing resources will implement the Ecology provisions of the bill.

### **WORK PLAN**

An update to the SEPA Handbook is currently being developed. Information on SHB 1707 will be included in the update and made available on the Internet.

Copies of SHB 1707 were distributed at the SEPA training conducted for local government in June and July. Copies will also be distributed at future SEPA training sessions.

**Contact person:** Barbara Ritchie – Shoreland Environmental Assistance Program;  
**Phone:** 360/407-6922; **E-mail:** [brit461@ecy.wa.gov](mailto:brit461@ecy.wa.gov)

# FINAL BILL REPORT

## SHB 1707

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### C 298 L 03

Synopsis as Enacted

**Brief Description:** Revising environmental review provisions to improve the development approval process and enhance economic development.

**Sponsors:** By House Committee on Local Government (originally sponsored by Representatives Jarrett, Simpson, Shabro, Sullivan, Moeller, Berkey, Schindler, Linville and Anderson).

**House Committee on Local Government**  
**Senate Committee on Land Use & Planning**

#### **Background:**

##### ***Growth Management Act***

The Growth Management Act (GMA) requires a county and its cities to plan under its major requirements if the county meets certain population and growth criteria. Other counties may choose to plan under the major requirements of the GMA. The counties and cities required or choosing to plan under the GMA's major requirements are referred to as GMA jurisdictions. Currently 29 of the 39 counties and their cities are GMA jurisdictions.

All counties and cities have certain responsibilities under the GMA. GMA jurisdictions must fulfill numerous planning requirements, including adoption of county-wide planning policies and designation of urban growth areas. GMA jurisdictions also must adopt comprehensive plans with certain mandatory elements, such as land use, transportation, and utilities, and must adopt implementing development regulations.

##### ***State Environmental Policy Act***

The State Environmental Policy Act (SEPA) requires local governments and state agencies to prepare an environmental impact statement (EIS) if proposed legislation or other major action may have a probable significant adverse impact on the environment. If it appears a probable significant adverse environmental impact may result, the proposal may be altered or its probable significant adverse impact mitigated. If this cannot be accomplished, an EIS is prepared. The responsible agency official has authority to make the threshold determination whether an EIS must be prepared.



Except for development projects that are exempt from SEPA requirements by statute or rule, the SEPA statutes generally require a project applicant to submit an environmental checklist. An environmental checklist includes questions about the potential impacts of the project on the built environment (e.g., land use, transportation, and utilities) and the natural environment (water, air, habitat, and wildlife). The checklist is reviewed by the SEPA lead agency (one of the agencies with permitting authority for the project) to determine whether the project is likely to have a significant adverse environmental impact. The lead agency also will review the checklist to determine if the applicant has identified mitigation sufficient to reduce environmental impacts.

After the checklist is reviewed, the lead agency issues its threshold determination. If a lead agency determines that a project is not likely to have a significant adverse environmental impact — or if mitigation sufficient to reduce these impacts has been identified — the lead agency issues a determination of nonsignificance (DNS) or a mitigated DNS (MDNS), which includes mitigation conditions for the project.

Alternatively, a lead agency issues a determination of significance (DS) if it determines that a project is likely to have a significant adverse environmental impact or mitigation cannot be identified to reduce these impacts. The DS triggers the requirement to prepare an EIS. The EIS is scoped to address only the matters determined to have a probable significant adverse environmental impact.

### SEPA Categorical Exemptions

The Department of Ecology (DOE) is required to adopt rules to implement SEPA. One rule requirement is to define "categorical exemptions," which are categories of actions not considered major actions significantly affecting the quality of the environment. The DOE must specify by rule circumstances in which certain actions that potentially are categorically exempt will be subject to environmental review. Actions determined to be categorically exempt, however, are not subject to SEPA's environmental review or EIS requirements.

### Project Review and SEPA Compliance

GMA jurisdictions may determine the analysis, review, and mitigation of adverse environmental impacts in GMA comprehensive plans and development regulations or other laws satisfy SEPA's procedural requirements for a development project if certain requirements are satisfied. These requirements include the GMA jurisdiction's:

- determination that the specific adverse environmental impacts of a project have been addressed by a comprehensive plan or development regulation provisions or other laws; and
- conditioning of the project on compliance with these requirements or mitigation measures.

A GMA jurisdiction that determines a project's impacts have been addressed in this manner may not impose additional mitigation under SEPA.

## **Summary:**

### SEPA Categorical Exemptions

Counties and cities planning under the major requirements of the Growth Management Act (GMA jurisdictions) may establish categorical exemptions from the requirements of the State Environmental Policy Act (SEPA) to accommodate infill development. Locally authorized categorical exemptions may differ from the categorical exemptions established by the Department of Ecology (DOE) by rule. GMA jurisdictions may adopt categorical exemptions to exempt government action related to development that is new residential or mixed-use development proposed to fill in an urban growth area when:

- current density and intensity of the use in the area is lower than called for in the goals and policies of the applicable comprehensive plan;
- the action would not exceed the density or intensity of use called for in the goals and policies of the applicable comprehensive plan; and
- the applicable comprehensive plan was previously subjected to environmental analysis through an EIS according to SEPA.

Any locally adopted categorical exemption is subject to the DOE's rules specifying exceptions to the use of categorical exemptions.

### Project Review and SEPA Compliance

GMA jurisdictions must determine that the analysis, review, and mitigation of adverse environmental impacts in GMA comprehensive plans and development regulations or other specified documents satisfy SEPA's procedural requirements for a development project if the statutory requirements are satisfied. GMA jurisdictions must issue determinations of nonsignificance (with or without mitigating conditions) under SEPA for projects under these circumstances. The DOE's rules regarding project specific impacts that may not have been adequately addressed apply to any such determination.

**Votes on Final Passage:**

House	96	0	
Senate	44	3	(Senate amended)
House	96	1	(House concurred)

**Effective:** July 27, 2003

### **Roll Calls on a Bill: 1707 (2003-04)**

Brief                Revising environmental review provisions to improve the  
Description:       development approval process and enhance economic development.

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#### **2003 Regular Session**

Chamber:        HOUSE  
Bill No.:         SHB 1707  
Description:     FINAL PASSAGE  
Item No.:        21  
Transcript No.: 60  
Date:             03-13-2003

Yeas: 96 Nays: 00 Absent: 00 Excused: 02

Voting        Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Benson,  
yea:           Berkey, Blake, Boldt, Buck, Bush, Cairnes, Campbell, Carrell, Chandler,  
                Chase, Clements, Clibborn, Cody, Condotta, Conway, Cooper, Cox,  
                Crouse, Darneille, DeBolt, Delvin, Dickerson, Dunshee, Eickmeyer,  
                Ericksen, Flannigan, Fromhold, Gombosky, Grant, Haigh, Hankins,  
                Hatfield, Hinkle, Holmquist, Hudgins, Hunt, Hunter, Jarrett, Kagi, Kenney,  
                Kessler, Kirby, Kristiansen, Lantz, Linville, Lovick, Mastin, McCoy,  
                McDermott, McDonald, McIntire, McMahan, McMorris, Mielke, Miloscia,  
                Moeller, Morrell, Morris, Murray, Newhouse, Nixon, O'Brien, Orcutt,  
                Pearson, Pettigrew, Priest, Quall, Roach, Rockefeller, Romero,  
                Ruderman, Santos, Schindler, Schoesler, Schual-Berke, Sehlin, Shabro,  
                Simpson, Skinner, Sommers, Sullivan, Sump, Talcott, Tom, Upthegrove,  
                Veloria, Wallace, Wood, Woods, and Mr. Speaker

Excused: Representatives Edwards, Pflug

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#### **2003 Regular Session**

Chamber:        SENATE  
Bill No.:         SHB 1707  
Description:     3RD READING & FINAL PASSAGE AS AMENDED BY THE  
                     SENATE  
Item No.:        19  
Transcript       88  
No.:  
Date:             04-10-2003

Yeas: 44 Nays: 03 Absent: 02 Excused: 00

Voting        Senators Benton, Brandland, Brown, Carlson, Deccio, Doumit, Eide, Esser,  
yea:           Franklin, Hale, Hargrove, Haugen, Hewitt, Honeyford, Horn, Jacobsen,

Johnson, Kastama, Keiser, Kohl-Welles, McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Poulsen, Prentice, Rasmussen, Reardon, Regala, Roach, Rossi, Schmidt, Sheahan, Sheldon, B., Sheldon, T., Shin, Spanel, Stevens, Swecker, West, Winsley, Zarelli

Voting Senators Fairley, Fraser, Thibaudeau  
nay:

Absent: Senators Finkbeiner, Kline

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### 2003 Regular Session

Chamber: HOUSE  
Bill No.: SHB 1707  
Description: FP AS AMD BY THE SENATE  
Item No.: 25  
Transcript No.: 99  
Date: 04-21-2003

Yeas: 96 Nays: 01 Absent: 00 Excused: 01

Voting Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Benson,  
yea: Berkey, Blake, Boldt, Buck, Bush, Cairnes, Campbell, Carrell, Chandler,  
Chase, Clements, Clibborn, Cody, Condotta, Conway, Cooper, Cox,  
Crouse, Darneille, DeBolt, Delvin, Dickerson, Dunshee, Edwards,  
Eickmeyer, Ericksen, Flannigan, Fromhold, Gombosky, Grant, Haigh,  
Hankins, Hatfield, Hinkle, Holmquist, Hudgins, Hunt, Hunter, Jarrett, Kagi,  
Kenney, Kessler, Kirby, Kristiansen, Lantz, Lovick, Mastin, McCoy,  
McDermott, McDonald, McIntire, McMahan, McMorris, Miloscia, Moeller,  
Morrell, Morris, Murray, Newhouse, Nixon, O'Brien, Orcutt, Pearson,  
Pettigrew, Pflug, Priest, Quall, Roach, Rockefeller, Romero, Ruderman,  
Santos, Schindler, Schoesler, Schual-Berke, Sehlin, Shabro, Simpson,  
Skinner, Sommers, Sullivan, Sump, Talcott, Tom, Upthegrove, Veloria,  
Wallace, Wood, Woods, and Mr. Speaker

Voting Representative Linville  
nay:

Excused: Representative Mielke



## **ENGROSSED SUBSTITUTE HOUSE BILL 1933**

*Declaring shoreline management act legislative intent*

### **PROGRAM/AGENCY IMPACTS**

This legislation requires critical areas (as defined by GMA) be regulated by local shoreline programs when the critical areas fall within the jurisdictional area of the Shoreline Management Act. Implementation is phased in as new shoreline programs are adopted as provided in SSB 6012. May marginally increase complexity of work related to adoption of local shoreline programs but will be handled within existing systems and resources.

### **RESOURCE IMPACTS**

No new resources or impacts to resources.

### **WORK PLAN**

Guidance to local government being issued in cooperation with CTED, Growth Management Division.

**Contact person:** Tom Mark – Shoreland Environmental Assistance Program;  
**Phone:** 360/407-7540; **E-mail:** [tmar461@ecy.wa.gov](mailto:tmar461@ecy.wa.gov)

# FINAL BILL REPORT

## ESHB 1933

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### C 321 L 03

Synopsis as Enacted

**Brief Description:** Declaring shoreline management act legislative intent.

**Sponsors:** By House Committee on Local Government (originally sponsored by Representatives Berkey, Kessler, Cairnes, Buck, Sullivan, Orcutt, Hatfield, Jarrett, Miloscia, Gombosky, Grant, DeBolt, Quall, Woods, Schoesler, Conway, Lovick, Clibborn, Edwards, Schindler, McCoy, Eickmeyer and Alexander).

**House Committee on Local Government**  
**Senate Committee on Land Use & Planning**

#### **Background:**

#### I. SHORELINE MANAGEMENT ACT

Policy. The Shoreline Management Act (SMA) governs uses of state shorelines. The SMA enunciates state policy to provide for shoreline management by planning for and fostering "all reasonable and appropriate uses." The SMA prioritizes public shoreline access and creates preference criteria listed in the following order of priority that must be used by state and local governments in regulating shoreline uses:

- recognizing statewide interest over local interest;
- preserving natural shoreline character;
- resulting in long-term over short-term benefit;
- protecting shoreline resources and ecology;
- increasing public access to publicly owned shoreline areas;
- increasing public recreational opportunities; and
- providing for any of the mandatory elements within the local shoreline master program.

The SMA governs "shorelines of the state." These "shorelines of the state" are defined in the SMA to include both "shorelines" and "shorelines of statewide significance" as defined by statute.

"Shorelands" include the lands extending landward for 200 feet in all directions from the ordinary high water mark as well as floodways and contiguous floodplain areas landward 200 feet from the floodways. "Shorelands" also include all



wetlands and river deltas associated with streams, lakes, and tidal waters subject to the SMA.

Requirements. The SMA involves a cooperative regulatory approach between local governments and the state. At the local level, SMA regulations are developed in local shoreline master programs (master programs). All counties and cities with shorelines of the state are required to adopt master programs which regulate land use activities in shoreline areas of the state. Counties and cities are also required to enforce their master programs within their jurisdictions. All 39 counties and more than 200 cities have enacted shoreline master programs.

Master Programs. Master programs regulate land use and activities within the shoreline jurisdiction. Local master programs have certain mandatory elements as appropriate. These include:

- an economic development element for locating and designing water-dependent industrial projects and other commercial activities;
- a public access element to provide for public access to public areas;
- a recreational element to preserve and enhance shoreline recreational opportunities;
- a circulation element to locate transportation and other public facilities for shoreline use;
- a use element addressing the location and extent of shoreline use for housing, business, industry, transportation, agriculture, natural resources, recreation, education, public facilities, and other uses;
- a conservation element to preserve natural resources in shoreline areas;
- a historic, cultural, scientific, and educational element to protect buildings, sites, and areas with such values; and
- an element considering statewide interests in preventing and minimizing flood damage.

Local governments may include other elements necessary to implement the SMA requirements.

Appeals. Appeals of shoreline rules adopted by the Department of Ecology (DOE) and other specific matters are reviewed by the Shorelines Hearings Board (SHB).

For jurisdictions planning under the major Growth Management Act requirements, adoption or amendment of master programs are appealed to the Growth Management Hearings Board (GMHB). Master programs adopted by other jurisdictions are appealed to the SHB. Certain standards are specified for appellate review of master programs. Decisions of either the SHB or the GMHB may be appealed to superior court.

## II. GROWTH MANAGEMENT ACT

Policy. The Growth Management Act (GMA) establishes a comprehensive land use planning framework for county and city governments in Washington. Counties and cities meeting specific population and growth criteria are required to comply with the major requirements of the GMA. Counties not meeting these criteria may choose to plan under the GMA. Twenty-nine of 39 counties, and the cities within those 29 counties, are required to or have chosen to comply with the major requirements of the GMA (GMA jurisdictions).

The GMA establishes a list of 13 planning goals to be used exclusively for guiding the development and adoption of comprehensive land use plans and development regulations by GMA jurisdictions. The goals, which are not listed in an order of priority, include:

- encouraging urban growth in urban areas with adequate public facilities;
- reducing low-density development sprawl;
- encouraging efficient, regionally coordinated transportation systems;
- encouraging affordable housing availability;
- encouraging economic development and growth in areas with insufficient growth;
- protecting private property rights;
- processing permits in a timely and fair manner;
- maintaining and enhancing natural resource industries;
- retaining and developing open space and recreation availability and opportunities;
- protecting the environment and water availability;
- encouraging citizen participation and coordination;
- ensuring adequate public facilities and services; and
- encouraging historic preservation.

Requirements - Comprehensive Land Use Plans/Critical Areas. Among numerous planning requirements, GMA jurisdictions must adopt internally consistent comprehensive land use plans (comprehensive plans), which are generalized, coordinated land use policy statements of the governing body. Each comprehensive plan must include planning provisions for each of the following elements:

- land use;
- housing;
- capital facilities plan;
- utilities;
- rural;
- transportation;
- economic development; and
- park and recreation.

The economic development and park and recreation elements do not require jurisdictional compliance or action until state funding is provided.

The GMA also requires all local governments to comply with specific provisions for critical areas. "Critical areas" are defined to include: wetlands; areas with a critical recharging effect on aquifers used for potable water; fish and wildlife habitat conservation areas; frequently flooded areas; and geologically hazardous areas. Using the best available science, each county and city must designate and protect critical areas. The protection of designated critical areas occurs through mandatory development regulations (i.e., critical area ordinances) adopted at the local level.

Comprehensive plans and development regulations are subject to continuing review and evaluation by the adopting county or city. Any amendments or revisions of development regulations must comply with the requirements of the GMA and must be consistent with and implement comprehensive plans.

### III. POLICY INTEGRATION

In 1995 the Legislature enacted environmental regulatory reform legislation that implemented recommendations of the Governor's Task Force on Regulatory Reform. The legislation added the goals and policies of the SMA as an additional goal to the 13 planning goals of the GMA. Furthermore, the goals and policies of a master program required by the SMA were deemed an element of a GMA jurisdiction's comprehensive plan.

#### **Summary:**

#### GMA PROVISIONS

Policy and Governance. The GMA is amended to specify new policy and governance provisions for shorelines of the state, including establishing that:

- the integration of SMA goals and policies into the planning goals of the GMA does not create an order of priority among the GMA planning goals;
- master programs may not be adopted pursuant to goals, policies, and other existing GMA criteria used for the adoption of comprehensive plans or development regulations; and
- SMA policies, goals, provisions, and applicable guidelines must, with limited exceptions, be the sole basis for determining compliance of a master program with the GMA.

Critical Areas - Jurisdictional Provisions. "Shorelines of the state" must not be considered critical areas under the GMA except to the extent that specific areas within shorelines of the state qualify for designation and have been designated as such by a local government.

As of the date the DOE approves a master program adopted under applicable shoreline guidelines, the protection of critical areas within shorelines of the state must be accomplished through a master program. Master programs must provide a level of protection to critical areas within shorelines of the state that is at least equal to that provided by specific development regulations (such as critical area ordinances) required by the GMA. Except as provided, these critical areas are not subject to the procedural and substantive requirements of the GMA. If a local jurisdiction's master program does not include land necessary for buffers for critical areas that occur within shorelines of the state, the local jurisdiction must continue to regulate those critical areas and the required buffers according to critical area ordinances.

Best Available Science. The GMA requirement for using the best available science when designating and protecting critical areas may not apply to the adoption or amendment of master programs and may not be used to determine compliance of a master program with the SMA and applicable guidelines.

## SMA PROVISIONS

Definitions and Concepts - Shorelands. The SMA definition of "shorelands" allows a local jurisdiction to include within its master program buffers for critical areas that occur within shorelines of the state. Forest practices, other than conversions to nonforest land use, within these buffer areas are not subject to additional regulations under the SMA.

Master Program Approval. The DOE must approve the segment of a master program relating to critical areas if the segment is consistent with the policy of the SMA and applicable guidelines, and if the segment provides a level of protection of critical areas at least equal to that provided by critical area ordinances.

Master Program Appeals - Growth Management Hearings Boards. Growth Management Hearings Boards (GMHBs) may review appeals of proposed master programs or amendments for compliance with specific internal consistency provisions of the GMA. GMHBs may also review appeals of proposed master programs or amendments for compliance with consistency provisions required for city and county development regulations.

## **Votes on Final Passage:**

House	66	31	
Senate	45	0	(Senate amended)
House	98	0	(House concurred)

**Effective:** July 27, 2003

### Roll Calls on a Bill: 1933 (2003-04)

Brief: Modifying shoreline and growth management provisions.  
Description: **Revised for 1st Substitute**: Declaring shoreline management act legislative intent.

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#### 2003 Regular Session

Chamber: HOUSE  
Bill No.: ESHB 1933  
Description: FINAL PASSAGE  
Item No.: 42  
Transcript No.: 64  
Date: 03-17-2003

Yeas: 66 Nays: 31 Absent: 00 Excused: 01

Voting yea: Representatives Alexander, Berkey, Buck, Bush, Cairnes, Campbell, Carrell, Chase, Clibborn, Cody, Conway, Cooper, Darneille, DeBolt, Dickerson, Dunshee, Eickmeyer, Ericksen, Flannigan, Fromhold, Gombosky, Grant, Haigh, Hankins, Hudgins, Hunt, Hunter, Jarrett, Kagi, Kenney, Kessler, Kirby, Kristiansen, Lantz, Linville, Lovick, McDermott, McDonald, McIntire, Miloscia, Moeller, Morrell, Morris, Murray, O'Brien, Pearson, Pettigrew, Priest, Quall, Rockefeller, Romero, Ruderman, Santos, Schoesler, Schual-Berke, Simpson, Sommers, Sullivan, Talcott, Tom, Upthegrove, Voloria, Wallace, Wood, Woods, and Mr. Speaker

Voting nay: Representatives Ahern, Anderson, Armstrong, Bailey, Benson, Blake, Boldt, Chandler, Clements, Condotta, Cox, Crouse, Delvin, Hatfield, Hinkle, Holmquist, Mastin, McCoy, McMahan, McMorris, Mielke, Newhouse, Nixon, Orcutt, Pflug, Roach, Schindler, Sehlin, Shabro, Skinner, Sump

Excused: Representative Edwards

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#### 2003 Regular Session

Chamber: SENATE  
Bill No.: ESHB 1933  
Description: 3RD READING & FINAL PASSAGE AS AMENDED BY THE SENATE  
Item No.: 34  
Transcript No.: 87  
Date: 04-09-2003

Yeas: 45 Nays: 00 Absent: 00 Excused: 04

Voting Senators Benton, Brandland, Brown, Carlson, Doumit, Eide, Esser,  
yea: Fairley, Finkbeiner, Franklin, Fraser, Hale, Hargrove, Hewitt, Honeyford,  
Horn, Jacobsen, Johnson, Kastama, Kline, Kohl-Welles, McAuliffe,  
Morton, Mulliken, Oke, Parlette, Poulsen, Prentice, Rasmussen, Reardon,  
Regala, Roach, Rossi, Schmidt, Sheahan, Sheldon, B., Sheldon, T., Shin,  
Spanel, Stevens, Swecker, Thibaudeau, West, Winsley, Zarelli

Excused: Senators Deccio, Haugen, Keiser, McCaslin

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### 2003 Regular Session

Chamber: HOUSE  
Bill No.: ESHB 1933  
Description: FP AS AMD BY THE SENATE  
Item No.: 1  
Transcript No.: 103  
Date: 04-25-2003

Yeas: 98 Nays: 00 Absent: 00 Excused: 00

Voting Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Benson,  
yea: Berkey, Blake, Boldt, Buck, Bush, Cairnes, Campbell, Carrell, Chandler,  
Chase, Clements, Clibborn, Cody, Condotta, Conway, Cooper, Cox, Crouse,  
Darneille, DeBolt, Delvin, Dickerson, Dunshee, Edwards, Eickmeyer,  
Ericksen, Flannigan, Fromhold, Gombosky, Grant, Haigh, Hankins, Hatfield,  
Hinkle, Holmquist, Hudgins, Hunt, Hunter, Jarrett, Kagi, Kenney, Kessler,  
Kirby, Kristiansen, Lantz, Linville, Lovick, Mastin, McCoy, McDermott,  
McDonald, McIntire, McMahan, McMorris, Mielke, Miloscia, Moeller, Morrell,  
Morris, Murray, Newhouse, Nixon, O'Brien, Orcutt, Pearson, Pettigrew,  
Pflug, Priest, Quall, Roach, Rockefeller, Romero, Ruderman, Santos,  
Schindler, Schoesler, Schual-Berke, Sehlin, Shabro, Simpson, Skinner,  
Sommers, Sullivan, Sump, Talcott, Tom, Upthegrove, Veloria, Wallace,  
Wood, Woods, and Mr. Speaker

## **ENGROSSED HOUSE BILL 2067**

*Permitting withdrawals of public ground waters*

### **PROGRAM/AGENCY IMPACTS**

EHB 2067 establishes a new category of ground water withdrawals that are exempt from the requirement to receive approval of a ground water right permit. On a pilot basis within Whitman County only, use of water for a domestic use in clustered residential developments is exempt from permit requirements if the use is less than 1,200 gallons per day by any residence and if overall density of the development equals or is less than one residence per ten acres for a minimum of six homes.

The Department is required to review use of water under this provision and its impact on water resources in Whitman County and report to the Legislature by December 31 of each even-numbered year through 2016.

### **RESOURCE IMPACTS**

No new revenue or resources were provided to implement the bill. The Department will incur some minor additional work relating to the requirement to report to the Legislature every two years. This should not amount to more than two person-weeks (80 hours) of effort every two years to request and receive information from the county on the qualifying developments that have been approved; investigate and review the use of water by those developments; assess the impacts, if any, on the water resources of Whitman County; and to document the findings in a brief report to the Legislature. The annualized cost to accomplish this work should not exceed one-one-hundredth of an FTE and \$1,500.

### **WORK PLAN**

No rules are required to implement the bill. Nor hiring is required. The minor amount of work required will be performed by existing staff.

The first report to the Legislature would be due December 31, 2004 and reports would be due every two years thereafter through 2016.

An Ecology staff person would be assigned to contact Whitman County to determine whether any qualifying cluster developments had been approved by the county during the previous two years. If none were approved, a letter would be written to report that finding to the chairs and ranking minority members of the committees of the Legislature with jurisdiction over water resources matters. If one or more such developments had been approved, the Department would contact the developer or

owners to consult with them on their experience in securing a water supply under the exemption. The Department might spot check the amount of water being withdrawn to assure that the project was remaining within the withdrawal and use limits in the law. The Department would also inquire locally regarding any impacts noted by other well owners in the area regarding their well levels and water availability. The result of such inquiries would be compiled in a report that would be forwarded to the chairs and ranking minority members of the committees of the Legislature with jurisdiction over water resources matters.

**Contact person** – Doug McChesney – Water Resources Program;  
**Phone:** 360/407-6647; **E-mail:** [dmmc461@ecy.wa.gov](mailto:dmmc461@ecy.wa.gov)



# FINAL BILL REPORT

## EHB 2067

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**C 307 L 03**  
Synopsis as Enacted

**Brief Description:** Permitting withdrawals of public ground waters.

**Sponsors:** By Representatives Schoesler and Cox.

**House Committee on Agriculture & Natural Resources**  
**Senate Committee on Natural Resources, Energy & Water**

### **Background:**

The Ground Water Code prohibits a person from withdrawing ground water or constructing wells or other works for such a withdrawal without a water right permit from the Department of Ecology. However, the code exempts a number of withdrawals from this requirement. One exemption is for single or group domestic uses in an amount not exceeding 5,000 gallons per day. In a recent decision of the state's Supreme Court, the Court found that this exemption did not allow the developer in the case to provide water for group uses by multiple homes each withdrawing up to 5,000 gallons per day.

### **Summary:**

The following is exempted, on a pilot project basis, from the water right permit requirements of the Ground Water Code: the domestic use of water for clustered residential developments not exceeding 1,200 gallons a day per residence for residential developments of at least six homes. The developments must have an overall density equal to or less than one residence per 10 acres. The pilot project applies only in Whitman County. No new right to use water for a clustered development under the pilot project may be established where the first residential use of water for the development begins after December 31, 2015.

The Department of Ecology must report to the Legislature biennially through 2016 regarding the use of water under the pilot project and its impact on water resources in the county.

### **Votes on Final Passage:**

House	96	0	
Senate	47	2	(Senate amended)
House	97	0	(House concurred)

**Effective:** July 27, 2003

## **Roll Calls on a Bill: 2067 (2003-04)**

Brief Description: Permitting withdrawals of public ground waters.

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### **2003 Regular Session**

Chamber: HOUSE  
Bill No.: EHB 2067  
Description: FINAL PASSAGE  
Item No.: 54  
Transcript No.: 60  
Date: 03-13-2003

Yeas: 96 Nays: 00 Absent: 00 Excused: 02

Voting Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Benson,  
yea: Berkey, Blake, Boldt, Buck, Bush, Cairnes, Campbell, Carrell, Chandler,  
Chase, Clements, Clibborn, Cody, Condotta, Conway, Cooper, Cox,  
Crouse, Darneille, DeBolt, Delvin, Dickerson, Dunshee, Eickmeyer,  
Ericksen, Flannigan, Fromhold, Gombosky, Grant, Haigh, Hankins,  
Hatfield, Hinkle, Holmquist, Hudgins, Hunt, Hunter, Jarrett, Kagi, Kenney,  
Kessler, Kirby, Kristiansen, Lantz, Linville, Lovick, Mastin, McCoy,  
McDermott, McDonald, McIntire, McMahan, McMorris, Mielke, Miloscia,  
Moeller, Morrell, Morris, Murray, Newhouse, Nixon, O'Brien, Orcutt,  
Pearson, Pettigrew, Priest, Quall, Roach, Rockefeller, Romero,  
Ruderman, Santos, Schindler, Schoesler, Schual-Berke, Sehlin, Shabro,  
Simpson, Skinner, Sommers, Sullivan, Sump, Talcott, Tom, Upthegrove,  
Veloria, Wallace, Wood, Woods, and Mr. Speaker

Excused: Representatives Edwards, Pflug

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### **2003 Regular Session**

Chamber: SENATE  
Bill No.: EHB 2067  
Description: 3RD READING & FINAL PASSAGE AS AMENDED BY THE  
SENATE  
Item No.: 10  
Transcript No.: 88  
Date: 04-10-2003

Yeas: 47 Nays: 02 Absent: 00 Excused: 00

Voting Senators Benton, Brandland, Brown, Carlson, Deccio, Doumit, Eide, Esser,  
yea: Fairley, Finkbeiner, Franklin, Fraser, Hale, Hargrove, Haugen, Hewitt, Horn,  
Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe,  
McCaslin, Morton, Mulliken, Oke, Parlette, Prentice, Rasmussen, Reardon,  
Regala, Roach, Rossi, Schmidt, Sheahan, Sheldon, B., Sheldon, T., Shin,  
Spanel, Stevens, Swecker, Thibaudeau, West, Winsley, Zarelli

Voting Senators Honeyford, Poulsen  
nay:

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### 2003 Regular Session

Chamber: HOUSE  
Bill No.: EHB 2067  
Description: FP AS AMD BY THE SENATE  
Item No.: 18  
Transcript No.: 100  
Date: 04-22-2003

Yeas: 97 Nays: 00 Absent: 00 Excused: 01

Voting Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Benson,  
yea: Berkey, Blake, Boldt, Buck, Bush, Cairnes, Campbell, Carrell, Chandler,  
Chase, Clements, Clibborn, Cody, Condotta, Conway, Cooper, Cox,  
Crouse, Darneille, DeBolt, Delvin, Dunshee, Edwards, Eickmeyer,  
Ericksen, Flannigan, Fromhold, Gombosky, Grant, Haigh, Hankins,  
Hatfield, Hinkle, Holmquist, Hudgins, Hunt, Hunter, Jarrett, Kagi, Kenney,  
Kessler, Kirby, Kristiansen, Lantz, Linville, Lovick, Mastin, McCoy,  
McDermott, McDonald, McIntire, McMahan, McMorris, Mielke, Miloscia,  
Moeller, Morrell, Morris, Murray, Newhouse, Nixon, O'Brien, Orcutt,  
Pearson, Pettigrew, Pflug, Priest, Quall, Roach, Rockefeller, Romero,  
Ruderman, Santos, Schindler, Schoesler, Schual-Berke, Sehlin, Shabro,  
Simpson, Skinner, Sommers, Sullivan, Sump, Talcott, Tom, Upthegrove,  
Veloria, Wallace, Wood, Woods, and Mr. Speaker

Excused: Representative Dickerson



## **ENGROSSED SUBSTITUTE SENATE BILL 5028**

*Clarifying the state's authority to regulate water pollution*

### **PROGRAM/AGENCY IMPACTS**

This legislation expressly states that it shall not be construed to affect past or future court decisions involving water quality certifications issued for federally licensed hydropower projects under Section 401 of the federal Clean Water Act. With respect to such hydropower projects, after the effective date (Sept. 9, 2003) Ecology may only require mitigation or remedies to the extent there is substantial evidence the project has caused the water quality violation or problem.

Ecology is specifically prohibited from using state water quality authority to condition or impair the exercise of a water right to improve water quality when water quality cannot reasonably be met through the issuance of water quality permits or orders issued under the state Water Pollution Control Act (CH 90.48 RCW). Ecology may use voluntary, incentive-based methods including funding of water conservation projects, lease and purchase of water rights, development of new storage projects, or habitat restoration projects in an attempt to meet water quality standards.

With certain exceptions, Ecology is authorized to levy civil penalties ranging from \$100 to \$5,000 per day for water code violations, to be determined after mandatory consideration of certain factors, including the seriousness of the violation, whether the violation is repeated or continuous after notice of the violation is given, and whether any damage has occurred to the health or property of other persons. The procedures of RCW 90.48.144 are applicable to all phases of the levying of a penalty as well as review and appeal of the same. For circumstances involving waste of water, Ecology may follow the sequence of compliance actions provided in RCW 90.03.605 (educate water right holders, seek voluntary compliance, then issue administrative orders).

### **RESOURCE IMPACTS**

There are no direct impacts to Ecology expenditures or revenues. Any increased penalties that may be collected will be deposited to the state General Fund.

### **WORK PLAN**

Ecology will identify potential voluntary incentive-based methods to increase stream flows and help achieve water quality standards on a case-by-case basis as the need

arises. Ecology may develop a more general description of the methods if needed and based on the early experience.

Ecology will implement the water resources penalty provisions of the bill on a case-by-case basis. Ecology may develop a more formal systematic approach to applying the penalty provisions if needed and based on the early experience.

Ecology will add an element to its guidance for 401 certifications addressing mitigation requirements for hydropower projects.

**Contact persons:**

**Water Quality:**

Dave Peeler

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**E-mail:** [dpee461@ecy.wa.gov](mailto:dpee461@ecy.wa.gov)

**Water Resources:**

Ken Slattery

**Phone:** 360/407-6603

**E-mail:** [kshw461@ecy.wa.gov](mailto:kshw461@ecy.wa.gov)

# FINAL BILL REPORT

## ESSB 5028

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C 15 L 03 E1  
Synopsis as Enacted

**Brief Description:** Clarifying the state's authority to regulate water pollution.

**Sponsors:** Senate Committee on Natural Resources, Energy & Water (originally sponsored by Senators Morton and Hale).

**Senate Committee on Natural Resources, Energy & Water**  
**House Committee on Agriculture & Natural Resources**

**Background:** In *Public Util. Dist. No. 1 v. Department of Ecology*, 146 Wn.2d 778 (2002), a case involving a federally licensed hydropower facility, the Washington Supreme Court concluded that the Department of Ecology (DOE) may impose minimum stream flow conditions in a water quality certification pursuant to Section 401 of the Clean Water Act, regardless of whether the applicant had existing water rights that might be affected.

A recent proceeding has raised the issue of whether DOE may use its water quality enforcement authority to impose similar restrictions upon a water right diversion that reduces instream flow and contributes to increased water temperatures that violate Washington State's Water Pollution Control Act.

**Summary:** DOE is prohibited from using state water quality authority to abrogate, supersede, impair, or condition the full exercise of a water right permit, certificate, exemption or claim. DOE is expressly allowed to use voluntary, incentive-based methods (water right lease/purchase, conservation funding, etc.) to improve water quality when water quality standards cannot reasonably be met through the issuance of water quality permits or orders.

It is expressly stated that provisions of the bill shall not be construed to affect past or future court decisions involving water quality certifications issued for federally licensed hydropower projects under Section 401 of the Clean Water Act. With respect to such hydropower projects, DOE may only require mitigation or remedies to the extent there is substantial evidence the project has caused the water quality violation or problem.

With certain exceptions, the Department of Ecology is authorized to levy civil penalties ranging from \$100 to \$5,000 per day for water code violations, to be determined after mandatory consideration of specified factors. DOE is expressly allowed to follow the sequence of enforcement actions provided in RCW 90.03.605

(educate water right holders, seek voluntary compliance) for circumstances involving water waste.

**Votes on Final Passage:**

Senate 26 23

First Special Session

Senate 26 22

House 61 31

**Effective:** September 9, 2003



## **Roll Calls on a Bill: 5028 (2003-04)**

Brief Description: Clarifying the state's authority to regulate water pollution.

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### **2003 Regular Session**

Chamber: SENATE  
Bill No.: ESSB 5028  
Description: 3RD READING & FINAL PASSAGE  
Item No.: 39  
Transcript No.: 60  
Date: 03-13-2003

Yeas: 26 Nays: 23 Absent: 00 Excused: 00

Voting Senators Benton, Deccio, Doumit, Esser, Hale, Haugen, Hewitt, Honeyford,  
yea: Horn, Johnson, McCaslin, Morton, Mulliken, Oke, Parlette, Rasmussen,  
Roach, Rossi, Schmidt, Sheahan, Sheldon, T., Stevens, Swecker, West,  
Winsley, Zarelli

Voting Senators Brandland, Brown, Carlson, Eide, Fairley, Finkbeiner, Franklin,  
nay: Fraser, Hargrove, Jacobsen, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe,  
Poulsen, Prentice, Reardon, Regala, Sheldon, B., Shin, Spanel, Thibaudeau

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### **2003 1st Special Session**

Chamber: SENATE  
Bill No.: ESSB 5028  
Description: 3RD READING & FINAL PASSAGE  
Item No.: 5  
Transcript No.: 25  
Date: 06-05-2003

Yeas: 26 Nays: 22 Absent: 00 Excused: 01

Voting Senators Benton, Brandland, Deccio, Doumit, Eide, Esser, Hale, Hewitt,  
yea: Honeyford, Horn, Johnson, McCaslin, Morton, Mulliken, Oke, Parlette,  
Rasmussen, Roach, Rossi, Schmidt, Sheahan, Sheldon, B., Sheldon, T.,  
Stevens, Swecker, Zarelli

Voting Senators Brown, Carlson, Fairley, Finkbeiner, Franklin, Fraser, Hargrove,  
nay: Haugen, Jacobsen, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe,  
Poulsen, Prentice, Reardon, Regala, Shin, Spanel, Thibaudeau, Winsley

Excused: Senator West

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### 2003 1st Special Session

Chamber: HOUSE  
Bill No.: ESSB 5028  
Description: FINAL PASSAGE  
Item No.: 2  
Transcript No.: 30  
Date: 06-10-2003

Yeas: 61 Nays: 31 Absent: 00 Excused: 06

Voting  
yea: Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Benson, Berkey, Blake, Boldt, Buck, Bush, Cairnes, Campbell, Carrell, Chandler, Clements, Clibborn, Cody, Condotta, Conway, Cox, Crouse, DeBolt, Delvin, Edwards, Ericksen, Flannigan, Grant, Haigh, Hankins, Hatfield, Hinkle, Jarrett, Kessler, Kirby, Kristiansen, Lantz, Linville, Lovick, McDonald, McMahan, McMorris, Mielke, Moeller, Morris, Newhouse, Orcutt, Pearson, Pflug, Priest, Quall, Rockefeller, Santos, Schindler, Shabro, Skinner, Sump, Talcott, Tom, Woods, and Mr. Speaker

Voting  
nay: Representatives Chase, Cooper, Darneille, Dickerson, Dunshee, Fromhold, Holmquist, Hudgins, Hunt, Hunter, Kagi, Kenney, McCoy, McDermott, McIntire, Miloscia, Morrell, Murray, Nixon, O'Brien, Pettigrew, Romero, Ruderman, Schual-Berke, Simpson, Sommers, Sullivan, Upthegrove, Voloria, Wallace, Wood

Excused: Representatives Eickmeyer, Gombosky, Mastin, Roach, Schoesler, Sehlin

## **ENGROSSED SENATE BILL 5073**

*Adopting provisions for cooperative watershed management plans*

### **PROGRAM/AGENCY IMPACTS**

This bill removes the statutory barriers that may prevent local governments from working together in the creation and implementation of cooperative, coordinated watershed plans. It also provides additional authorities to assist in such implementation. It allows city and county governments and certain special purpose districts to use up to ten percent of their water-related revenues to be expended in the implementation of watershed management plans. It also allows two or more public agencies to enter into agreements to form a watershed management partnership for the purpose of implementing watershed management plans.

### **RESOURCE IMPACTS**

There will be no resource impacts on Ecology. The bill applies to local governments and special purpose districts and is permissive not prescriptive. Ecology will not be affected by implementation of this bill.

### **WORK PLAN**

None needed.

**Contact person:** Gale Blomstrom – Shoreland Environmental Assistance Program;  
**Phone:** 360/407-6548; **E-mail:** [gblo461@ecy.wa.gov](mailto:gblo461@ecy.wa.gov)

# FINAL BILL REPORT

## ESB 5073

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### PARTIAL VETO

C 327 L 03

Synopsis as Enacted

**Brief Description:** Adopting provisions for cooperative watershed management plans.

**Sponsors:** Senators Fraser, Honeyford, Hale and Kohl-Welles.

**Senate Committee on Natural Resources, Energy & Water**  
**House Committee on Agriculture & Natural Resources**

**Background:** Chapter 90.82 RCW establishes procedures and policies for initiating voluntary watershed planning at the local level. Planning is conducted according to the Water Resource Inventory Area (WRIA), with each WRIA corresponding to a watershed or river basin. Planning is conducted in three phases: (1) organization of a planning unit and determination of the scope of planning. Appointed planning units must address water quantity issues in the WRIA or multi-WRIA area. Planning units may, but are not required to, address other issues such as water quality, instream flows, or habitat protection; (2) water quantity assessment, development of strategies for future use, and recommendations for each issue area the unit chooses to address; and (3) development of a watershed plan and recommendations for action.

Upon application, the Department of Ecology (DOE) is authorized to provide up to \$50,000 for phase one in single WRIA planning units, and up to \$75,000 in multi-WRIA units; up to \$200,000 for phase two; and up to \$250,000 for phase three.

**Summary:** Statutory and fiscal authority is provided so that numerous local government entities with water-related services and functions can more fully cooperate and coordinate efforts as watershed plans are adopted and implemented. In addition to cities and counties, the following special district entities are expressly authorized to expend water-related revenues, raise water-related funds, and participate in cooperative watershed management activities: water and sewer, public utility, port, diking, drainage, flood control, aquifer, shellfish, lake management, irrigation, reclamation, conservation, and other similar special purpose districts.

Eligible implementation activities are broadly defined to include oversight of plan implementation, technical support, monitoring, and projects in the areas of water supply, water quality, and habitat protection. The range of management plans entities may work toward implementing can include plans for watersheds, salmon recovery, growth management, shoreline management, and Puget Sound Water Quality, as well as other comprehensive WRIA-based management plans. Public agencies are expressly allowed to form separate legal entities, to be called watershed

management partnerships, under the Interlocal Cooperation Act (ICA) (chapter 39.34 RCW). These partnerships, acting as separate legal entities, may coordinate plan implementation. They are also authorized to submit revenue proposals at general or special elections, to contract indebtedness, and to issue and sell general obligation and revenue bonds. Watershed partnerships must designate a treasurer for handling the partnership's funds, and the treasurer must be a county treasurer or a city treasurer.

These local government entities are authorized to expend up to 10 percent of their existing water-related revenues and water-related funds on the implementation of watershed plan projects or activities. This 10 percent limit applies only to the new activities coming out of the plan, not existing, ongoing and traditional water service activities. This limit does not apply to public utility district water-related revenues or to new revenues that may be authorized by voter approval. Revenues dedicated to repayment of debt instruments are not to be used. Revenue proposals for a watershed management partnership must ensure that persons or property are not taxed or assessed by more than one agency for a specific watershed management plan project, program, or activity.

**Votes on Final Passage:**

Senate	49	0	
House	62	34	(House amended)
Senate			(Senate concurred in part; refused to concur in part)
House	67	30	(House amended)
Senate	47	0	(Senate concurred)

**Effective:** July 27, 2003

**Partial Veto Summary:** The Governor vetoed Section 5 of ESB 5073. Section 5 provided for the submission of watershed management partnership revenue proposals by special or general election.

## Roll Calls on a Bill: 5073 (2003-04)

Brief Description: Adopting provisions for cooperative watershed management plans.

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### 2003 Regular Session

Chamber: SENATE  
Bill No.: ESB 5073  
Description: 3RD READING & FINAL PASSAGE  
Item No.: 43  
Transcript No.: 64  
Date: 03-17-2003

Yeas: 49 Nays: 00 Absent: 00 Excused: 00

Voting Senators Benton, Brandland, Brown, Carlson, Deccio, Doumit, Eide, Esser,  
yea: Fairley, Finkbeiner, Franklin, Fraser, Hale, Hargrove, Haugen, Hewitt,  
Honeyford, Horn, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles,  
McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Poulsen, Prentice,  
Rasmussen, Reardon, Regala, Roach, Rossi, Schmidt, Sheahan, Sheldon,  
B., Sheldon, T., Shin, Spanel, Stevens, Swecker, Thibaudeau, West,  
Winsley, Zarelli

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### 2003 Regular Session

Chamber: HOUSE  
Bill No.: ESB 5073  
Description: FP AS AMD BY THE HOUSE  
Item No.: 16  
Transcript No.: 92  
Date: 04-14-2003

Yeas: 62 Nays: 34 Absent: 00 Excused: 02

Voting Representatives Berkey, Cairnes, Carrell, Chandler, Chase, Clements,  
yea: Clibborn, Cody, Conway, Cooper, Darneille, Dickerson, Dunshee,  
Eickmeyer, Flannigan, Fromhold, Gombosky, Grant, Haigh, Hankins,  
Hudgins, Hunt, Hunter, Jarrett, Kagi, Kenney, Kessler, Kirby, Lantz,  
Linville, Lovick, Mastin, McCoy, McDermott, McDonald, McIntire, Miloscia,  
Moeller, Morrell, Morris, Murray, Newhouse, O'Brien, Pettigrew, Priest,  
Quall, Rockefeller, Romero, Ruderman, Santos, Schual-Berke, Shabro,  
Simpson, Skinner, Sommers, Sullivan, Tom, Upthegrove, Voloria, Wallace,  
Wood, and Mr. Speaker

Voting Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Benson,  
nay: Blake, Boldt, Buck, Bush, Campbell, Condotta, Crouse, DeBolt, Delvin,  
Ericksen, Hatfield, Hinkle, Holmquist, Kristiansen, McMahan, McMorris,  
Mielke, Nixon, Orcutt, Pearson, Pflug, Roach, Schindler, Schoesler, Sehlin,  
Sump, Talcott, Woods

Excused: Representatives Cox, Edwards

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### 2003 Regular Session

Chamber: HOUSE  
Bill No.: ESB 5073  
Description: FP AS AMD BY THE HOUSE  
Item No.: 18  
Transcript No.: 102  
Date: 04-24-2003

Yeas: 67 Nays: 30 Absent: 00 Excused: 01

Voting Representatives Alexander, Anderson, Armstrong, Berkey, Cairnes,  
yea: Chandler, Chase, Clements, Clibborn, Cody, Conway, Cooper, Darneille,  
DeBolt, Dickerson, Dunshee, Edwards, Eickmeyer, Flannigan, Fromhold,  
Gombosky, Grant, Haigh, Hankins, Hudgins, Hunt, Hunter, Jarrett, Kagi,  
Kenney, Kessler, Kirby, Lantz, Linville, Lovick, McCoy, McDermott,  
McIntire, McMorris, Miloscia, Moeller, Morrell, Morris, Murray, Newhouse,  
Nixon, O'Brien, Pettigrew, Pflug, Priest, Quall, Rockefeller, Romero,  
Ruderman, Santos, Schual-Berke, Simpson, Skinner, Sommers, Sullivan,  
Tom, Upthegrove, Veloria, Wallace, Wood, Woods, and Mr. Speaker

Voting Representatives Ahern, Bailey, Benson, Blake, Boldt, Buck, Bush,  
nay: Campbell, Carrell, Condotta, Cox, Crouse, Delvin, Ericksen, Hatfield,  
Hinkle, Holmquist, Kristiansen, Mastin, McMahan, Mielke, Orcutt, Pearson,  
Roach, Schindler, Schoesler, Sehlin, Shabro, Sump, Talcott

Excused: Representative McDonald

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### 2003 Regular Session

Chamber: SENATE  
Bill No.: ESB 5073  
Description: FINAL PASSAGE AS AMENDED BY THE HOUSE  
Item No.: 8  
Transcript No.: 104  
Date: 04-26-2003

Yeas: 47 Nays: 00 Absent: 01 Excused: 01

Voting     Senators Benton, Brandland, Brown, Carlson, Doumit, Eide, Esser, Fairley,  
yea:       Finkbeiner, Fraser, Hale, Hargrove, Haugen, Hewitt, Honeyford, Horn,  
             Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe,  
             McCaslin, Morton, Mulliken, Oke, Parlette, Poulsen, Prentice, Rasmussen,  
             Reardon, Regala, Roach, Rossi, Schmidt, Sheahan, Sheldon, B., Sheldon,  
             T., Shin, Spanel, Stevens, Swecker, Thibaudeau, West, Winsley, Zarelli

Absent:    Senator Franklin

Excused:  Senator Deccio



## **SUBSTITUTE SENATE BILL 5144**

*Protecting forest land from exotic forest insects or diseases*

### **PROGRAM/AGENCY IMPACTS**

This bill revises and expands the authority of Department of Natural Resources (DNR) to respond to forest health emergencies, such as infestations of exotic insect pests and diseases, on forest lands. The bill authorizes the Commissioner of Public Lands to declare a forest health emergency and authorize emergency control actions which would be exempt from forest practices rules. The control actions to be taken in such an emergency may include cutting trees or building roads closer to surface waters than otherwise would be allowed and/or aerial spraying of pesticides that could enter surface waters.

The forest practices rules are designed to protect water quality. These exempt actions could negatively affect water quality. To address this, the bill confirms that emergency actions are not exempt from federal Clean Water Act requirements administered by the Department of Ecology (Ecology). DNR is required to consult with Ecology on the control actions and Integrated Pest Management plans. Ecology may need to take action in some cases, such as to authorize aerial spraying of pesticides that could enter surface waters or to consult on conditions to ensure that emergency actions do not degrade water quality.

### **RESOURCE IMPACTS**

Based on DNR's projection of only one emergency forest health declaration each year, the impact of this bill on Ecology appears to be low or nonexistent.

### **WORK PLAN**

No advance effort by Ecology – such as writing guidance or a general permit for emergency forest pest control – is needed. When there is a forest health emergency, Ecology will work with DNR on how best to respond to that emergency while also protecting water quality. If necessary and upon request, Ecology will prepare a specific permit or other authorization regarding proposed pest control actions, in accordance with existing surface water quality requirements.

**Contact person:** Dave Peeler – Water Quality Program; **Phone:** 360/407-6489; **E-mail:** [dpee461@ecy.wa.gov](mailto:dpee461@ecy.wa.gov)

# FINAL BILL REPORT

## SSB 5144

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C 314 L 03

Synopsis as Enacted

**Brief Description:** Protecting forest land from exotic forest insects or diseases.

**Sponsors:** Senate Committee on Natural Resources, Energy & Water (originally sponsored by Senators Morton and Oke).

**Senate Committee on Natural Resources, Energy & Water**  
**House Committee on Agriculture & Natural Resources**

**Background:** Numerous studies indicate that the health of Washington forests is declining, as is the health of forests in other western states. An increasing number of forest stands are becoming susceptible to insect and disease outbreaks. There is an increasing concern about present management practices and the growing risk of exotic and deleterious insects, diseases and plants. The Department of Agriculture has the responsibility concerning exotic insects and diseases, and the Department of Natural Resources has authority over most forest health issues. Sudden Oak Death Syndrome first appeared in California and there is increasing concern that it will affect Douglas fir and oak in Washington.

**Summary:** The Department of Natural Resources, under the control of the Commissioner of Public Lands, directs the control or eradication of exotic insects and diseases, in cooperation with the Department of Agriculture. A forest practices permit is not required for this activity. A forest practices permit is not required when the Department of Agriculture operates under its authority to control exotic pests or when the Department of Natural Resources seeks to control exotic forest pests in a forest health emergency. The provisions for a forest health emergency are specified in the proposal. The departments will coordinate their responses to the problems of Sudden Oak Death Syndrome.

**Votes on Final Passage:**

Senate	49	0	
House	94	3	(House amended)
Senate	48	0	(Senate concurred)

**Effective:** July 27, 2003

## **Roll Calls on a Bill: 5144 (2003-04)**

Brief Description: Protecting forest land from exotic forest insects or diseases.

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### **2003 Regular Session**

Chamber: SENATE  
Bill No.: SSB 5144  
Description: 3RD READING & FINAL PASSAGE  
Item No.: 15  
Transcript No.: 64  
Date: 03-17-2003

Yeas: 49 Nays: 00 Absent: 00 Excused: 00

Voting Senators Benton, Brandland, Brown, Carlson, Deccio, Doumit, Eide, Esser,  
yea: Fairley, Finkbeiner, Franklin, Fraser, Hale, Hargrove, Haugen, Hewitt,  
Honeyford, Horn, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles,  
McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Poulsen, Prentice,  
Rasmussen, Reardon, Regala, Roach, Rossi, Schmidt, Sheahan, Sheldon,  
B., Sheldon, T., Shin, Spanel, Stevens, Swecker, Thibaudeau, West,  
Winsley, Zarelli

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### **2003 Regular Session**

Chamber: HOUSE  
Bill No.: SSB 5144  
Description: FP AS AMD BY THE HOUSE  
Item No.: 3  
Transcript No.: 94  
Date: 04-16-2003

Yeas: 94 Nays: 03 Absent: 00 Excused: 01

Voting Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Benson,  
yea: Berkey, Blake, Boldt, Buck, Bush, Cairnes, Campbell, Carrell, Chandler,  
Chase, Clibborn, Cody, Condotta, Conway, Cooper, Cox, Crouse,  
Darneille, DeBolt, Delvin, Dickerson, Dunshee, Eickmeyer, Ericksen,  
Flannigan, Fromhold, Gombosky, Grant, Haigh, Hankins, Hatfield,  
Hudgins, Hunt, Hunter, Jarrett, Kagi, Kenney, Kessler, Kirby, Kristiansen,  
Lantz, Linville, Lovick, Mastin, McCoy, McDermott, McDonald, McIntire,  
McMahan, McMorris, Mielke, Miloscia, Moeller, Morrell, Morris, Murray,  
Newhouse, Nixon, O'Brien, Orcutt, Pearson, Pettigrew, Pflug, Priest, Quall,

Roach, Rockefeller, Romero, Ruderman, Santos, Schindler, Schoesler, Schual-Berke, Sehlin, Shabro, Simpson, Skinner, Sommers, Sullivan, Sump, Talcott, Tom, Upthegrove, Veloria, Wallace, Wood, Woods, and Mr. Speaker

Voting     Representatives Clements, Hinkle, Holmquist  
nay:

Excused: Representative Edwards

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### 2003 Regular Session

Chamber:     SENATE

Bill No.:     SSB 5144

Description:   FINAL PASSAGE AS AMENDED BY THE HOUSE

Item No.:     4

Transcript No.: 101

Date:           04-23-2003

Yeas: 48 Nays: 00 Absent: 00 Excused: 01

Voting     Senators Benton, Brandland, Brown, Carlson, Deccio, Doumit, Eide, Esser,  
yea:       Fairley, Finkbeiner, Franklin, Fraser, Hale, Hargrove, Haugen, Hewitt,  
             Honeyford, Horn, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-  
             Welles, McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Poulsen,  
             Prentice, Rasmussen, Reardon, Regala, Roach, Rossi, Schmidt, Sheahan,  
             Sheldon, B., Sheldon, T., Shin, Spanel, Stevens, Swecker, Thibaudeau,  
             Winsley, Zarelli

Excused: Senator West

## **ENGROSSED SENATE BILL 5256**

*Revising rule-making procedures*

### **PROGRAM/AGENCY IMPACTS**

ESB 5256 requires agencies to prepare a preliminary Cost Benefit Analysis (CBA) and make it available, upon request, to the public when the CR-102 is filed.

### **RESOURCE IMPACTS**

No resources were provided. This will require a shift in workload so that the CBA can be completed when a program files their proposed rule language with the CR-102 form. It will also require a small amount of additional time for the economist assigned to the rule to respond to comments on the CBA during the public comment period.

### **WORK PLAN**

Documentation and instruction provided to program staff rule writers will be adjusted to incorporate this shift in timing for completion of a CBA at the CR-102 stage of rule making. Further, staff training will be conducted on changes in the rule making process as a result of bills passed during this past legislative session.

**Contact person:** Jerry Thielen – Rules Unit of Governmental Relations;

**Phone:** 360/407-7551; **E-mail:** [jthi461@ecy.wa.gov](mailto:jthi461@ecy.wa.gov)

# FINAL BILL REPORT

## ESB 5256

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C 165 L 03

Synopsis as Enacted

**Brief Description:** Revising rule-making procedures.

**Sponsors:** Senators Roach, Doumit, Hale, Kastama, Mulliken, T. Sheldon, Haugen, Hewitt, Stevens, Zarelli, Parlette, Horn, Rossi and Johnson.

**Senate Committee on Government Operations & Elections**  
**House Committee on State Government**

**Background:** When an agency first proposes to adopt a rule, it must determine whether the proposed rule is a significant legislative rule that requires the significant legislative rule-making analysis.

Significant legislative rules are rules that do one of the following: adopt substantive provisions of law, the violation of which results in penalties or sanctions; affect the issuance, suspension, or revocation of a license or permit; or make significant changes to regulatory programs.

The significant legislative rules of certain agencies are subject to the additional procedural requirement in their adoption called the significant legislative rule-making analysis. One of these additional analyses is whether the benefits of the rule are greater than the costs.

**Summary:** For rules subject to the significant legislative rules process, the notice of proposed rule-making must contain a statement that a preliminary cost-benefit analysis is available. If an agency files a supplemental notice of rule-making, a revised preliminary cost-benefit analysis must be available. When the rule is adopted, a final cost-benefit analysis must be available.

**Votes on Final Passage:**

Senate	48 1
House	93 0

**Effective:** July 27, 2003

## Roll Calls on a Bill: 5256 (2003-04)

Brief Description: Revising rule-making procedures.

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### 2003 Regular Session

Chamber: SENATE  
Bill No.: ESB 5256  
Description:  
Item No.: 3  
Transcript No.: 30  
Date: 02-11-2003

Yeas: 48 Nays: 01 Absent: 00 Excused: 00

Voting Senators Benton, Brandland, Brown, Carlson, Deccio, Doumit, Eide, Esser,  
yea: Fairley, Finkbeiner, Franklin, Fraser, Hale, Hargrove, Haugen, Hewitt,  
Honeyford, Horn, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles,  
McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Poulsen, Prentice,  
Rasmussen, Reardon, Regala, Roach, Rossi, Schmidt, Sheahan, Sheldon,  
B., Sheldon, T., Shin, Spanel, Stevens, Swecker, West, Winsley, Zarelli

Voting Senator Thibaudeau  
nay:

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### 2003 Regular Session

Chamber: HOUSE  
Bill No.: ESB 5256  
Description: FINAL PASSAGE  
Item No.: 11  
Transcript No.: 92  
Date: 04-14-2003

Yeas: 93 Nays: 00 Absent: 00 Excused: 05

Voting Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Benson,  
yea: Berkey, Blake, Boldt, Buck, Bush, Cairnes, Campbell, Carrell, Chandler,  
Chase, Clements, Clibborn, Cody, Condotta, Conway, Cooper, Crouse,  
Darneille, DeBolt, Dickerson, Dunshee, Eickmeyer, Ericksen, Flannigan,  
Fromhold, Grant, Haigh, Hankins, Hatfield, Hinkle, Holmquist, Hudgins,  
Hunt, Hunter, Jarrett, Kagi, Kenney, Kessler, Kirby, Kristiansen, Lantz,  
Linville, Lovick, Mastin, McCoy, McDermott, McDonald, McIntire,  
McMahan, McMorris, Mielke, Miloscia, Moeller, Morrell, Morris, Murray,  
Newhouse, Nixon, O'Brien, Orcutt, Pearson, Pettigrew, Pflug, Priest, Quall,

Roach, Rockefeller, Romero, Ruderman, Santos, Schindler, Schoesler,  
Schual-Berke, Sehlin, Shabro, Simpson, Skinner, Sullivan, Sump, Talcott,  
Tom, Upthegrove, Veloria, Wallace, Wood, Woods, and Mr. Speaker

Excused: Representatives Cox, Delvin, Edwards, Gombosky, Sommers



## **ENGROSSED SENATE BILL 5279**

*Extending the expiration date of the transportation permit efficiency and accountability committee*

### **PROGRAM/AGENCY IMPACTS**

This new law:

- extends the expiration date for the State's Transportation Permit Efficiency and Accountability Committee (TPEAC) to March 31, 2006 (from March 31, 2003);
- directs development of detailed workplans for TPEAC and its various subcommittees, and transmittal of such to the Legislature by 6/30/03;
- directs that workplan progress reports be transmitted to the Legislature every six months beginning 12/31/03; and
- requires creation of a task force to develop recommendations on uniform local standards, further analysis of permit delegation issues and options, and establishment of ten permit drafting pilot projects.

### **RESOURCE IMPACTS**

No new resources were provided to Ecology to implement ESB 5279. Instead resources were provided to the Washington State Department of Transportation (WSDOT) to be provided back to local, state, federal, and tribal agencies through inter-agency contracts. At present, Ecology and WSDOT are negotiating a biennial contract for roughly \$600,000 and 4.0 FTEs.

### **WORK PLAN**

TPEAC was created with the goal of achieving transportation permit reform that expedites the delivery of transportation projects through a streamlined approach to environmental permit decision-making. Ecology has been a strong supporter of the multi-party TPEAC process since its inception (roughly two-years ago), and in particular a strong advocate for multi-agency streamlining solutions. As such Ecology has worked (and will continue to work) with TPEAC and its various subcommittees to develop and pursue streamlining solutions that are multi-agency in nature. It is Ecology's view that by working together to better integrate the permitting process (like as required by 2SSB 5694), teaming-up to build multi-agency permitting teams of co-located regulatory personnel, and convening technical permitting experts to standardize permitting terms and conditions across applicable local, state, and

federal regulatory agencies, the ability to realize significant timeline efficiencies and gains can best be realized. Accordingly, Ecology will continue to work with the TPEAC process over the course of the 2003-05 biennium, and will, in addition to the activities added by the 2003 Legislature (above), focus its activities and emphasis around:

- furtherance of multi-agency programmatic approvals (i.e., single sets of already agreed upon standards and conditions for discrete WSDOT activity types like over-water bridge and ferry terminal maintenance/preservation activities, drainage and culvert maintenance and repair work, and bridge scour repair work);
- development of a multi-agency permitting team for WSDOT projects (i.e., Ecology is working with the state Departments of Transportation, Fish and Wildlife, and U.S. Army Corps of Engineers to co-locate key regulatory personnel into a single office space at Ecology's Northwest Regional Office to work exclusively on select transportation projects); and
- furtherance of a watershed-based permitting and mitigation approach whereby mitigation of transportation impacts is considered for points elsewhere in a watershed in cases where on-site mitigation benefit is considered marginal.

See <http://www.wsdot.wa.gov/environment/streamlineact/default.htm> for a full overview of the TPEAC process, as well as TPEAC subcommittee workplans.

**Contact person:** Please contact either of the following for more information:

Sue Mauermann – Special Assistant for Regulatory Improvement, Department of Ecology; **Phone:** 360/407-0291; **E-mail:** [smau461@ecy.wa.gov](mailto:smau461@ecy.wa.gov)

Scott Boettcher – Senior Regulatory Improvement Advisor, Department of Ecology; **Phone:** 360/407-7564; **E-mail:** [sboe461@ecy.wa.gov](mailto:sboe461@ecy.wa.gov)

# FINAL BILL REPORT

## ESB 5279

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C 8 L 03

Synopsis as Enacted

**Brief Description:** Extending the expiration date of the transportation permit efficiency and accountability committee.

**Sponsors:** Senators Prentice, Swecker, Horn, Haugen, Doumit, Finkbeiner, Benton, Esser, Morton, Johnson, T. Sheldon, Hargrove, Brandland, Honeyford, Jacobsen, Oke and Rasmussen.

**Senate Committee on Highways & Transportation**  
**House Committee on Transportation**

**Background:** The Transportation Permit Efficiency and Accountability Committee (TPEAC) was created by Engrossed Senate Bill 6188, Chapter 2, Laws 2001, 1st special session. The committee was created with the goal of achieving transportation permit reform that expedites the delivery of transportation projects through a streamlined approach to environmental permit decisionmaking. The legislation charged the committee with the task of integrating current environmental standards. To carry out this task, the committee was directed to conduct three environmental permit streamlining projects, develop a one-stop permit decision-making process, seek federal delegation of permitting where appropriate, develop a dispute resolution process and develop various other permitting efficiency measures.

The committee includes nine voting members: four members of the state Legislature, three members from state agencies, and two local government representatives. Eight non-voting members include business, tribal, trade and environmental organizations. Federal agencies also participate.

An appropriation of \$3,296,000 was provided to the Department of Transportation for support of the committee during the 2001-03 biennium. Other agencies contributed to the cost of the effort through dedicated staff time and other in-kind contributions. The act creating TPEAC expires March 31, 2003.

**Summary:** The committee is extended to March 31, 2006. Goals for specific outcomes are established. Detailed work plans are required, and dates are set for reports on progress.

**Votes on Final Passage:**

Senate	46 0
House	70 19

**Effective:** March 31, 2003

## **Roll Calls on a Bill: 5279 (2003-04)**

Brief Description: Extending the expiration date of the transportation permit efficiency and accountability committee.

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### **2003 Regular Session**

Chamber: SENATE  
Bill No.: ESB 5279  
Description: 3RD READING & FINAL PASSAGE  
Item No.: 21  
Transcript No.: 65  
Date: 03-18-2003

Yeas: 46 Nays: 00 Absent: 01 Excused: 02

Voting yea: Senators Benton, Brandland, Brown, Carlson, Doumit, Eide, Esser, Fairley, Franklin, Fraser, Hale, Hargrove, Haugen, Hewitt, Honeyford, Horn, Jacobsen, Johnson, Kastama, Keiser, Kohl-Welles, McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Poulsen, Prentice, Rasmussen, Reardon, Regala, Roach, Rossi, Schmidt, Sheahan, Sheldon, B., Sheldon, T., Shin, Spanel, Stevens, Swecker, Thibaudeau, West, Winsley, Zarelli

Absent: Senator Finkbeiner

Excused: Senators Deccio, Kline

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### **2003 Regular Session**

Chamber: HOUSE  
Bill No.: ESB 5279  
Description: 327 ERICKSEN STRIKER  
Item No.: 1  
Transcript No.: 75  
Date: 03-28-2003

Yeas: 39 Nays: 51 Absent: 00 Excused: 08

Voting yea: Representatives Ahern, Anderson, Bailey, Benson, Buck, Bush, Cairnes, Campbell, Carrell, Chandler, Clements, Condotta, Cox, Crouse, DeBolt, Delvin, Ericksen, Hinkle, Holmquist, Kristiansen, McDonald, McMahan, McMorris, Mielke, Newhouse, Nixon, Orcutt, Pearson, Pflug, Priest, Roach, Schindler, Schoesler, Sehlin, Shabro, Skinner, Sump, Tom, Woods

Voting nay: Representatives Armstrong, Berkey, Blake, Chase, Clibborn, Cody, Conway, Cooper, Darneille, Dickerson, Dunshee, Flannigan, Fromhold,

Gombosky, Grant, Haigh, Hankins, Hatfield, Hudgins, Hunt, Hunter, Jarrett, Kagi, Kenney, Kessler, Kirby, Lantz, Linville, Lovick, McCoy, McDermott, McIntire, Miloscia, Moeller, Morrell, Morris, Murray, O'Brien, Pettigrew, Rockefeller, Romero, Ruderman, Santos, Simpson, Sommers, Sullivan, Upthegrove, Veloria, Wallace, Wood, and Mr. Speaker

Excused: Representatives Alexander, Boldt, Edwards, Eickmeyer, Mastin, Quall, Schual-Berke, Talcott

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### 2003 Regular Session

Chamber: HOUSE  
Bill No.: ESB 5279  
Description: FINAL PASSAGE  
Item No.: 2  
Transcript No.: 75  
Date: 03-28-2003

Yeas: 70 Nays: 19 Absent: 00 Excused: 09

Voting yea: Representatives Anderson, Armstrong, Berkey, Blake, Buck, Bush, Cairnes, Campbell, Carrell, Chandler, Chase, Clibborn, Cody, Conway, Cooper, Darneille, Dickerson, Dunshee, Ericksen, Flannigan, Fromhold, Gombosky, Grant, Haigh, Hankins, Hatfield, Hudgins, Hunt, Hunter, Jarrett, Kagi, Kenney, Kessler, Kirby, Kristiansen, Lantz, Linville, Lovick, McCoy, McDermott, McDonald, McIntire, McMorris, Miloscia, Moeller, Morrell, Morris, Murray, Newhouse, Nixon, O'Brien, Pearson, Pettigrew, Pflug, Priest, Rockefeller, Romero, Ruderman, Santos, Shabro, Simpson, Skinner, Sommers, Sullivan, Tom, Veloria, Wallace, Wood, Woods, and Mr. Speaker

Voting nay: Representatives Ahern, Bailey, Benson, Clements, Condotta, Cox, Crouse, DeBolt, Delvin, Hinkle, Holmquist, McMahan, Mielke, Orcutt, Roach, Schindler, Schoesler, Sehlin, Sump

Excused: Representatives Alexander, Boldt, Edwards, Eickmeyer, Mastin, Quall, Schual-Berke, Talcott, Upthegrove



## **ENGROSSED SENATE BILL 5343**

*Allowing WRIA 40 to be divided for the purposes of chapter 90.82 RCW*

### **PROGRAM/AGENCY IMPACTS**

This bill amends RCW 90.82, and for purposes of watershed planning under this chapter, splits WRIA 40 into 2 subbasins: WRIA 40a is that portion entirely within the Stemilt and Squilchuck subbasins, and WRIA 40b is the remaining portion of the WRIA. Planning may be conducted separately, with WRIA 40a eligible for 25 percent of the funding available for a single WRIA and WRIA 40b eligible for the other 75 percent.

### **RESOURCE IMPACTS**

Resource impacts on Ecology will be negligible. The funding level remains unchanged; the two WRIAs will split what the single WRIA was eligible for. No new staff resources are expected to be needed to support the planning process

### **WORK PLAN**

When a grant application is submitted per the statute, we will process the application per standard procedures. We will provide Ecology staff technical assistance to the planning process as requested and as resources allow.

**Contact person:** Gale Blomstrom – Shoreland Environmental Assistance Program;  
**Phone:** 360/407-6548; **E-mail:** [gblo461@ecy.wa.gov](mailto:gblo461@ecy.wa.gov)

# FINAL BILL REPORT

## ESB 5343

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C 328 L 03

Synopsis as Enacted

**Brief Description:** Allowing WRIA 40 to be divided for the purposes of chapter 90.82 RCW.

**Sponsors:** Senators Parlette, Doumit, Mulliken, Hale and Deccio.

**Senate Committee on Natural Resources, Energy & Water**  
**House Committee on Agriculture & Natural Resources**

**Background:** Under Chapter 90.82 RCW, watershed planning is conducted according to the Water Resource Inventory Area (WRIA). Each WRIA corresponds to a watershed or river basin.

Watershed planning is conducted in three phases: (1) initiation and organization of a planning unit; (2) water quantity assessment and future use strategy; and (3) development of a watershed plan and recommendations for action. The phase three efforts of the earliest formed planning units are expected to come to fruition, in the form of completed watershed plans submitted to county legislative authorities, in 2003.

RCW 90.82.130 provides that the legislative authority of each county with territory in a watershed must conduct at least one public hearing on a proposed watershed plan, after which they must convene in a joint session to consider the plan. By majority vote, the members of each affected county can approve or reject, but not amend, the plan. Once adopted, watershed plan obligations are binding on county governments. Counties must also adopt implementing ordinances, as necessary, setting out how binding obligations within the plan will be implemented.

Upon application, the Department of Ecology (DOE) is authorized to provide up to \$50,000 for phase one in single WRIA planning units, and up to \$75,000 in multi-WRIA units; up to \$200,000 for phase two; and up to \$250,000 for phase three.

**Summary:** WRIA 40 is split into two separate WRIA planning segments, 40a and 40b. Proposed WRIA 40a contains the Stemilt and Squilchuck watershed subbasins. WRIA 40b extends south of WRIA 40a and borders the western edge of the Columbia River through Kittitas, Yakima, and Benton counties.

WRIA 40a is eligible for one-fourth of the funding available for a single WRIA. 40b is eligible for the remaining three-fourths of the funding available for a single WRIA.



**Votes on Final Passage:**

Senate	49	0	
House	86	2	(House amended)
Senate	47	0	(Senate concurred)

**Effective:** July 27, 2003

### **Roll Calls on a Bill: 5343 (2003-04)**

Brief                      Allowing WRIA 40 to be divided for the purposes of chapter 90.82  
Description:            RCW.

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#### **2003 Regular Session**

Chamber:            SENATE  
Bill No.:            ESB 5343  
Description:        3RD READING & FINAL PASSAGE  
Item No.:            3  
Transcript No.: 45  
Date:                02-26-2003

Yeas: 49 Nays: 00 Absent: 00 Excused: 00

Voting   Senators Benton, Brandland, Brown, Carlson, Deccio, Doumit, Eide, Esser,  
yea:      Fairley, Finkbeiner, Franklin, Fraser, Hale, Hargrove, Haugen, Hewitt,  
            Honeyford, Horn, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles,  
            McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Poulsen, Prentice,  
            Rasmussen, Reardon, Regala, Roach, Rossi, Schmidt, Sheahan, Sheldon,  
            B., Sheldon, T., Shin, Spanel, Stevens, Swecker, Thibaudeau, West,  
            Winsley, Zarelli

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#### **2003 Regular Session**

Chamber:            HOUSE  
Bill No.:            ESB 5343  
Description:        FP AS AMD BY THE HOUSE  
Item No.:            13  
Transcript No.: 89  
Date:                04-11-2003

Yeas: 86 Nays: 02 Absent: 00 Excused: 10

Voting   Representatives Ahern, Anderson, Bailey, Benson, Blake, Boldt, Buck,  
yea:      Bush, Cairnes, Campbell, Carrell, Chandler, Chase, Clibborn, Cody,  
            Conway, Cooper, Cox, Crouse, Darneille, DeBolt, Delvin, Dickerson,  
            Dunshee, Eickmeyer, Ericksen, Flannigan, Fromhold, Gombosky, Grant,  
            Haigh, Hatfield, Hinkle, Holmquist, Hudgins, Hunt, Hunter, Jarrett, Kagi,  
            Kessler, Kirby, Kristiansen, Lantz, Linville, Lovick, Mastin, McCoy,  
            McDermott, McDonald, McIntire, McMahan, McMorris, Mielke, Miloscia,  
            Moeller, Morrell, Morris, Murray, Newhouse, Nixon, O'Brien, Orcutt,  
            Pearson, Pettigrew, Pflug, Priest, Quall, Roach, Rockefeller, Romero,

Ruderman, Santos, Schindler, Schoesler, Sehlín, Shabro, Simpson,  
Sommers, Sullivan, Sump, Tom, Upthegrove, Veloria, Wallace, Woods,  
and Mr. Speaker

Voting     Representatives Armstrong, Condotta  
nay:

Excused: Representatives Alexander, Berkey, Clements, Edwards, Hankins,  
Kenney, Schual-Berke, Skinner, Talcott, Wood

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### 2003 Regular Session

Chamber:     SENATE

Bill No.:     ESB 5343

Description:   FINAL PASSAGE AS AMENDED BY THE HOUSE

Item No.:     15

Transcript No.: 99

Date:           04-21-2003

Yeas: 47 Nays: 00 Absent: 00 Excused: 02

Voting     Senators Benton, Brandland, Brown, Carlson, Deccio, Doumit, Eide, Esser,  
yea:       Fairley, Finkbeiner, Franklin, Fraser, Hale, Hargrove, Haugen, Hewitt,  
             Honeyford, Horn, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-  
             Welles, McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Poulsen,  
             Prentice, Rasmussen, Reardon, Regala, Roach, Rossi, Sheahan, Sheldon,  
             B., Sheldon, T., Shin, Spanel, Stevens, Swecker, Thibaudeau, Winsley,  
             Zarelli

Excused: Senators Schmidt, West



## **SENATE BILL 5512**

*Including nonprofits in the small business economic impact statement requirement*

### **PROGRAM/AGENCY IMPACTS**

This bill extends coverage of the Regulatory Fairness Act (Chapter 19.85 RCW) to non-profit organizations by striking the language "...that has the purpose of making a profit," from the definition of a small business. Although in general, Ecology rules do not impact non-profit businesses, the effect of this legislation is to expand the regulated community, covered by RCW 19.85 in some cases.

### **RESOURCE IMPACTS**

No additional resources were provided.

### **WORK PLAN**

No work plan is necessary.

**Contact person:** Jerry Thielen – Rules Unit of Governmental Relations;

**Phone:** 360/407-7551; **E-mail:** [jthi461@ecy.wa.gov](mailto:jthi461@ecy.wa.gov)

# FINAL BILL REPORT

## SB 5512

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**C 166 L 03**  
Synopsis as Enacted

**Brief Description:** Including nonprofits in the small business economic impact statement requirement.

**Sponsors:** Senators Honeyford, Kastama, West, Keiser, Winsley and Rasmussen.

**Senate Committee on Commerce & Trade**  
**House Committee on State Government**

**Background:** The Federal Regulatory Flexibility Act of 1980 gave federal agencies the power to reduce the impact of rules and paperwork requirements on small businesses. The state of Washington followed the federal practice in enacting the Regulatory Fairness Act in 1982.

Under the Regulatory Fairness Act, in most instances when a state agency proposes to adopt a rule, the agency must prepare a "small business economic impact statement." The statement must include a description of how small businesses will be involved in the development of the rule, an analysis of the costs of complying with the proposed rule, including whether compliance will result in lost sales or revenue, and whether the rule will have a disproportionate impact on small businesses. The statement must also identify the steps, if any, the agency took to reduce the costs of the rule on small businesses, or provide a "reasonable justification for not doing so."

"Small business" is defined to mean "any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, that has the purpose of making a profit, and that has 50 or fewer employees."

**Summary:** For the purposes of the Regulatory Fairness Act, the requirement that an entity affected by a rule must have "the purpose of making a profit" is deleted from the definition of "small business." Agencies preparing small business economic impact statements must consider the effect of rules on nonprofit corporations, charitable organizations and similar groups with 50 or fewer employees.

**Votes on Final Passage:**

Senate	49 0
House	98 0

**Effective:** July 27, 2003

## **Roll Calls on a Bill: 5512 (2003-04)**

Brief                      Including nonprofits in the small business economic impact  
Description:            statement requirement.

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### **2003 Regular Session**

Chamber:            SENATE  
Bill No.:            SB 5512  
Description:        3RD READING & FINAL PASSAGE  
Item No.:           21  
Transcript No.:    64  
Date:                03-17-2003

Yeas: 49 Nays: 00 Absent: 00 Excused: 00

Voting   Senators Benton, Brandland, Brown, Carlson, Deccio, Doumit, Eide, Esser,  
yea:      Fairley, Finkbeiner, Franklin, Fraser, Hale, Hargrove, Haugen, Hewitt,  
            Honeyford, Horn, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles,  
            McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Poulsen, Prentice,  
            Rasmussen, Reardon, Regala, Roach, Rossi, Schmidt, Sheahan, Sheldon,  
            B., Sheldon, T., Shin, Spanel, Stevens, Swecker, Thibaudeau, West,  
            Winsley, Zarelli

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### **2003 Regular Session**

Chamber:            HOUSE  
Bill No.:            SB 5512  
Description:        FINAL PASSAGE  
Item No.:           3  
Transcript No.:    96  
Date:                04-18-2003

Yeas: 98 Nays: 00 Absent: 00 Excused: 00

Voting   Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Benson,  
yea:      Berkey, Blake, Boldt, Buck, Bush, Cairnes, Campbell, Carrell, Chandler,  
            Chase, Clements, Clibborn, Cody, Condotta, Conway, Cooper, Cox, Crouse,  
            Darneille, DeBolt, Delvin, Dickerson, Dunshee, Edwards, Eickmeyer,  
            Ericksen, Flannigan, Fromhold, Gombosky, Grant, Haigh, Hankins, Hatfield,  
            Hinkle, Holmquist, Hudgins, Hunt, Hunter, Jarrett, Kagi, Kenney, Kessler,  
            Kirby, Kristiansen, Lantz, Linville, Lovick, Mastin, McCoy, McDermott,  
            McDonald, McIntire, McMahan, McMorris, Mielke, Miloscia, Moeller, Morrell,  
            Morris, Murray, Newhouse, Nixon, O'Brien, Orcutt, Pearson, Pettigrew,

Pflug, Priest, Quall, Roach, Rockefeller, Romero, Ruderman, Santos,  
Schindler, Schoesler, Schual-Berke, Sehlin, Shabro, Simpson, Skinner,  
Sommers, Sullivan, Sump, Talcott, Tom, Upthegrove, Veloria, Wallace,  
Wood, Woods, and Mr. Speaker



## **SUBSTITUTE SENATE BILL 5575**

### *Concerning small irrigation impoundments*

#### **PROGRAM/AGENCY IMPACTS**

The bill establishes two new exemptions from the requirement to obtain a reservoir permit for certain types of small irrigation impoundments. One type exempted is an impoundment used to recapture and reuse irrigation return flow water from a single farm irrigation operation provided the acreage irrigated is not larger than the allowed level. The second type is any lined surface storage pond less than ten acre-feet in volume used to impound irrigation water under an existing water right where the impoundment facilitates efficient use of water or promotes Endangered Species Act compliance and provided there is no increase in the acreage irrigated above the allowed level.

Prior to passage of this bill, any such impoundment would have required a reservoir permit issued by the Department of Ecology unless it predated passage of the 1917 Water Code. Consequently, the bill has potential to marginally reduce the permitting workload of the Department. This bill would have no near term impact on the Department's workload due to the current lengthy backlog of permit applications awaiting action. The Department believes that over the long term, the new law will involve no more than several hundred such impoundments (both existing and future).

#### **RESOURCE IMPACTS**

No new revenue or resources have been provided to implement the bill, nor are any needed. The Department does not anticipate any increase in workload due to the bill and if anything, long term workload will be decreased. Some minor reduction in water right fee revenue will occur due to exempting these projects from the permitting process. However, this will be almost a *de minimis* loss due to the very small fees that are collected for water rights processing (total fees collected for all filings average about \$20,000 per year).

#### **WORK PLAN**

No rule-making is required by the bill. No funds have been provided, nor is any hiring planned or funded. The Department will implement the bill on a case by case basis as it is contacted by persons seeking to construct an impoundment or otherwise inquiring about the requirements for constructing a small impoundment.

The Department will incorporate information about this exemption into its publications and Internet site within the next year.

**Contact person:** Kenneth Slattery – Water Resources Program;  
**Phone:** 360/407-6603; **E-mail:** [kshw461@ecy.wa.gov](mailto:kshw461@ecy.wa.gov)

# FINAL BILL REPORT

## SSB 5575

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C 329 L 03  
Synopsis as Enacted

**Brief Description:** Concerning small irrigation impoundments.

**Sponsors:** Senate Committee on Natural Resources, Energy & Water (originally sponsored by Senators Parlette, Morton, Doumit, Honeyford and Hale).

**Senate Committee on Natural Resources, Energy & Water**  
**House Committee on Agriculture & Natural Resources**

**Background:** Currently, persons proposing to store water in a reservoir must get a reservoir permit from the state Department of Ecology, and, if they propose to beneficially use the stored water, a "secondary permit" authorizing the beneficial use. It has been suggested that relatively small irrigation facilities should be exempt from these requirements.

**Summary:** The following irrigation facilities are exempt from reservoir and secondary use permit requirements:

- Facilities for recapturing and reusing return flows from irrigation operations serving a single farm under an existing water right, as long as the acreage irrigated is not increased beyond the acreage limit authorized under the existing water right.
- "Small irrigation impoundments," lined surface storage ponds less than ten acre feet in volume used to impound irrigation water under an existing water right. Use of the small irrigation impoundment must facilitate efficient use of water or promote compliance with an approved recovery plan for endangered or threatened species, and must not expand the number of acres irrigated or the annual consumptive quantity of water used. A small irrigation impoundment need not be lined if a licensed engineer determines that a liner is not needed to retain water and prevent ground water contamination. Water remaining at the end of an irrigation season may be carried over for use in the next season, subject to the foregoing requirements. Development and use of a small irrigation impoundment does not require a water right holder to change, transfer, or amend any existing water right to enable them to store water governed by the right.

**Votes on Final Passage:**

Senate	49	0	
House	98	0	(House amended)
Senate	46	0	(Senate concurred)

**Effective:** July 27, 2003

## **Roll Calls on a Bill: 5575 (2003-04)**

Brief Description: Concerning small irrigation impoundments.

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### **2003 Regular Session**

Chamber: SENATE  
Bill No.: SSB 5575  
Description: 3RD READING & FINAL PASSAGE  
Item No.: 4  
Transcript No.: 45  
Date: 02-26-2003

Yeas: 49 Nays: 00 Absent: 00 Excused: 00

Voting Senators Benton, Brandland, Brown, Carlson, Deccio, Doumit, Eide, Esser,  
yea: Fairley, Finkbeiner, Franklin, Fraser, Hale, Hargrove, Haugen, Hewitt,  
Honeyford, Horn, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles,  
McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Poulsen, Prentice,  
Rasmussen, Reardon, Regala, Roach, Rossi, Schmidt, Sheahan, Sheldon,  
B., Sheldon, T., Shin, Spanel, Stevens, Swecker, Thibaudeau, West,  
Winsley, Zarelli

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### **2003 Regular Session**

Chamber: HOUSE  
Bill No.: SSB 5575  
Description: FP AS AMD BY THE HOUSE  
Item No.: 1  
Transcript No.: 96  
Date: 04-18-2003

Yeas: 98 Nays: 00 Absent: 00 Excused: 00

Voting Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Benson,  
yea: Berkey, Blake, Boldt, Buck, Bush, Cairnes, Campbell, Carrell, Chandler,  
Chase, Clements, Clibborn, Cody, Condotta, Conway, Cooper, Cox, Crouse,  
Darneille, DeBolt, Delvin, Dickerson, Dunshee, Edwards, Eickmeyer,  
Ericksen, Flannigan, Fromhold, Gombosky, Grant, Haigh, Hankins, Hatfield,  
Hinkle, Holmquist, Hudgins, Hunt, Hunter, Jarrett, Kagi, Kenney, Kessler,  
Kirby, Kristiansen, Lantz, Linville, Lovick, Mastin, McCoy, McDermott,  
McDonald, McIntire, McMahan, McMorris, Mielke, Miloscia, Moeller, Morrell,  
Morris, Murray, Newhouse, Nixon, O'Brien, Orcutt, Pearson, Pettigrew,  
Pflug, Priest, Quall, Roach, Rockefeller, Romero, Ruderman, Santos,

Schindler, Schoesler, Schual-Berke, Sehlin, Shabro, Simpson, Skinner, Sommers, Sullivan, Sump, Talcott, Tom, Upthegrove, Veloria, Wallace, Wood, Woods, and Mr. Speaker

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### **2003 Regular Session**

Chamber: SENATE  
Bill No.: SSB 5575  
Description: FINAL PASSAGE AS AMENDED BY THE HOUSE  
Item No.: 17  
Transcript No.: 100  
Date: 04-22-2003

Yeas: 46 Nays: 00 Absent: 00 Excused: 03

Voting Senators Benton, Brandland, Brown, Carlson, Doumit, Eide, Esser,  
yea: Fairley, Finkbeiner, Franklin, Fraser, Hale, Hargrove, Haugen, Hewitt,  
Honeyford, Horn, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-  
Welles, McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Poulsen,  
Prentice, Rasmussen, Regala, Roach, Rossi, Schmidt, Sheahan,  
Sheldon, B., Sheldon, T., Shin, Spanel, Stevens, Swecker, Thibaudeau,  
Winsley, Zarelli

Excused: Senators Deccio, Reardon, West



## **SECOND SUBSTITUTE SENATE BILL 5694**

*Creating a pilot project to develop an integrated environmental permit system*

### **PROGRAM/AGENCY IMPACTS**

This new law:

- requires (by 12/01/05) the Office of Regulatory Assistance to develop:
  - a guide for creating a unified project decision support document for state and federal agencies and local governments;
  - recommendations for an integrated permit system to integrate project design, review, permitting, and mitigation;
  - recommendations for legislative changes needed to establish the system; and
  - recommendations for full-scale testing of the system through a pilot project.
- provides that the method for meeting the requirements to develop a guide and recommendations be done through a pilot project of economic development significance;
- directs that the Office of Regulatory Assistance submit progress reports on its efforts on December 1, 2003 and December 1, 2005.
- expires December 31, 2005.

### **RESOURCE IMPACTS**

No new resources were provided to Ecology to implement 2SSB 5694.

### **WORK PLAN**

While 2SSB 5694 is not an Ecology measure per se, nor a measure for which Ecology received new or additional resources, it is a measure Ecology strongly supports and will work in close partnership with the Office of Regulatory Assistance to implement. Ecology's support for 2SSB 5694 is built around the assumption that by integrating the documentation and procedures associated with environmental and regulatory decision-making (especially the voluminous information and materials often compiled for larger, more complex projects), project-specific timeline and permit processing efficiencies can be gained. Toward this end, Ecology will work in the weeks and months ahead with the Office of Regulatory Assistance to help

develop necessary information and outreach materials for project proponents potentially interested in being a near-term pilot.

**Contact Person:** Please contact either of the following for more information:

Sue Mauermann – Special Assistant for Regulatory Improvement;

**Phone:** 360/407-0291; **E-mail:** [smau461@ecy.wa.gov](mailto:smau461@ecy.wa.gov)

Scott Boettcher – Senior Regulatory Improvement Advisor; **Phone:** 360/407-7564;

**E-mail:** [sboe461@ecy.wa.gov](mailto:sboe461@ecy.wa.gov)



# FINAL BILL REPORT

## 2SSB 5694

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C 245 L 03

Synopsis as Enacted

**Brief Description:** Creating a pilot project to develop an integrated environmental permit system.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Swecker, Jacobsen, Horn, Doumit, Haugen and Rasmussen).

**Senate Committee on Economic Development**  
**Senate Committee on Ways & Means**  
**House Committee on State Government**  
**House Committee on Appropriations**

**Background:** The environmental review and permitting process is controlled by a number of statutes. It has been suggested that the integration of the documentation and procedures needed for agency decision-making would streamline the permitting process.

**Summary:** By December 1, 2005, the Office of Permit Assistance must develop: (1) a guide for creating a unified project decision support document for state and federal agencies and local governments; (2) recommendations for an integrated permit system to integrate project design, review, permitting, and mitigation; recommendations for legislative changes needed to establish the system; and recommendations for full-scale testing of the system through a pilot project.

Meeting the requirements to develop a guide and recommendations is done through a pilot project of economic development significance. The office must submit reports on its efforts on December 1, 2003, and December 1, 2005.

The act expires December 31, 2005, and has no legal force if not specifically funded in the budget.

**Votes on Final Passage:**

Senate	48	0	
House	89	0	(House amended)
Senate	45	0	(Senate concurred)

**Effective:** July 27, 2003

### **Roll Calls on a Bill: 5694 (2003-04)**

Brief Description: Creating a pilot project to develop an integrated environmental permit system.

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#### **2003 Regular Session**

Chamber: SENATE  
Bill No.: 2SSB 5694  
Description: 3RD READING & FINAL PASSAGE  
Item No.: 35  
Transcript No.: 63  
Date: 03-16-2003

Yeas: 48 Nays: 00 Absent: 00 Excused: 01

Voting yea: Senators Benton, Brandland, Brown, Carlson, Deccio, Doumit, Eide, Esser, Fairley, Finkbeiner, Franklin, Fraser, Hale, Hargrove, Haugen, Hewitt, Honeyford, Horn, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Prentice, Rasmussen, Reardon, Regala, Roach, Rossi, Schmidt, Sheahan, Sheldon, B., Sheldon, T., Shin, Spanel, Stevens, Swecker, Thibaudeau, West, Winsley, Zarelli

Excused: Senator Poulsen

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#### **2003 Regular Session**

Chamber: HOUSE  
Bill No.: 2SSB 5694  
Description: FP AS AMD BY THE HOUSE  
Item No.: 15  
Transcript No.: 89  
Date: 04-11-2003

Yeas: 89 Nays: 00 Absent: 00 Excused: 09

Voting yea: Representatives Ahern, Anderson, Armstrong, Bailey, Benson, Blake, Boldt, Buck, Bush, Cairnes, Campbell, Carrell, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Cooper, Cox, Crouse, Darneille, DeBolt, Delvin, Dickerson, Dunshee, Eickmeyer, Ericksen, Flannigan, Fromhold, Gombosky, Grant, Haigh, Hatfield, Hinkle, Holmquist, Hudgins, Hunt, Hunter, Jarrett, Kagi, Kessler, Kirby, Kristiansen, Lantz, Linville, Lovick, Mastin, McCoy, McDermott, McDonald, McIntire, McMahan, McMorris, Mielke, Miloscia, Moeller, Morrell, Morris, Murray, Newhouse, Nixon,

O'Brien, Orcutt, Pearson, Pettigrew, Pflug, Priest, Quall, Roach, Rockefeller, Romero, Ruderman, Santos, Schindler, Schoesler, Schual-Berke, Sehlin, Shabro, Simpson, Sommers, Sullivan, Sump, Tom, Upthegrove, Veloria, Wallace, Woods, and Mr. Speaker

Excused: Representatives Alexander, Berkey, Clements, Edwards, Hankins, Kenney, Skinner, Talcott, Wood

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### 2003 Regular Session

Chamber: SENATE  
Bill No.: 2SSB 5694  
Description: FINAL PASSAGE AS AMENDED BY THE HOUSE  
Item No.: 9  
Transcript No.: 99  
Date: 04-21-2003

Yeas: 45 Nays: 00 Absent: 01 Excused: 03

Voting Senators Benton, Brandland, Brown, Carlson, Deccio, Doumit, Eide,  
yea: Esser, Fairley, Finkbeiner, Franklin, Fraser, Hale, Haugen, Hewitt,  
Honeyford, Horn, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-  
Welles, McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Poulsen,  
Prentice, Rasmussen, Reardon, Regala, Roach, Sheahan, Sheldon, B.,  
Sheldon, T., Shin, Spanel, Stevens, Swecker, Thibaudeau, Winsley,  
Zarelli

Absent: Senator Hargrove

Excused: Senators Rossi, Schmidt, West



## **SUBSTITUTE SENATE BILL 5761**

*Modifying requirements for industrial projects of statewide significance*

### **PROGRAM/AGENCY IMPACTS**

This new law:

- expands the definition of industrial projects of statewide significance to include projects with projected employment positions of 50 or greater in rural counties and 100 or greater in urban counties;
- designates an application process to be established by the Department of Community Trade and Economic Development (that must include a letter of approval from jurisdictions where a project is located) to designate a project as an industrial project of statewide significance;
- directs that counties and cities with an industrial project of statewide significance are to enter into agreements with the Office of Regulatory Assistance and project managers of industrial projects of statewide significance to expedite the necessary review and permitting processes; and
- directs that the Office of Regulatory Assistance provide facilitation and coordination services to designated industrial projects of statewide significance.

### **RESOURCE IMPACTS**

No new resources were provided to Ecology to implement SSB 5671.

### **WORK PLAN**

While SSB 5671 is not an Ecology measure per se, nor a measure for which Ecology received new or additional resources, it is a measure Ecology strongly supports and will work in close partnership with the Office of Regulatory Assistance (ORA) to implement. Ecology's support for SSB 5671 is built around the value of creating a bottom-up mechanism/process (beginning at the local government level) to clearly identify and underscore projects that are top priorities to the State of Washington. With the advent of such new tools as the "ORA" and "cost-reimbursement," Ecology is hopeful Washington's Industrial Projects of Statewide Significance Law (as now updated by the 2003 Legislature) will be better able to provide such projects with the priority attention and focus originally conceived. Ecology will work in the weeks and months ahead with the Office of Regulatory

Assistance and State Department of Community, Trade, and Economic Development to help develop necessary information and outreach materials that can be used to describe the newly updated Industrial Projects of Statewide Significance law, as well as to underscore how the State's new ORA and cost-reimbursement tools can be used to streamline the environmental review and permitting process.

**Contact person:** Please contact either of the following for more information:

Sue Mauermann – Special Assistant for Regulatory Improvement;

**Phone:** 360/407-0291; **E-mail:** [smau461@ecy.wa.gov](mailto:smau461@ecy.wa.gov)

Scott Boettcher – Senior Regulatory Improvement Advisor; **Phone:** 360/407-7564;

**E-mail:** [sboe461@ecy.wa.gov](mailto:sboe461@ecy.wa.gov)

# FINAL BILL REPORT

## SSB 5761

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C 54 L 03

Synopsis as Enacted

**Brief Description:** Modifying requirements for industrial projects of statewide significance.

**Sponsors:** Senate Committee on Economic Development (originally sponsored by Senators T. Sheldon and Shin).

**Senate Committee on Economic Development**  
**House Committee on Trade & Economic Development**

**Background:** In 1997, the Legislature created a process to expedite the development of industrial projects of statewide significance. Industrial investments of statewide significance are defined as either a border crossing project that involves both private and public investments or a private capital investment in manufacturing or research and development. The capital investment threshold is dependent on the size of the population in a county. The capital investment requirements range from \$20 million for a project located in a county with a population of 20,000 or less, to \$1 billion for a project located in a county with a population greater than one million. The Director of the Department of Community, Trade, and Economic Development (CTED) may designate a project as one of statewide significance in special circumstances.

Counties and cities may include in their written plans a process to expedite the review, approval, permitting, and completion of projects of statewide significance.

CTED must assign an ombudsman to each project of statewide significance to assemble a team of state, local government, and private officials to help meet the project's planning and development needs.

In 2001, the Legislature created the Office of Permit Assistance in the Office of Financial Management to provide information, facilitation, and coordination services to help streamline the permitting process.

**Summary:** The definition of industrial projects of statewide significance is expanded to include projects with projected employment positions of 50 or greater in rural counties and 100 or greater in urban counties. An application for designation as an industrial project of statewide significance must be submitted to CTED. The application includes a letter of approval from jurisdictions where a project is located.

Counties and cities with projects are to enter into agreements with the Office of Permit Assistance and project managers of industrial projects of statewide

significance to expedite the processes necessary for the design and construction of projects.

The Office of Permit Assistance is to provide facilitation and coordination services to industrial projects of statewide significance.

**Votes on Final Passage:**

Senate	48	0
House	96	0

**Effective:** July 27, 2003



### **Roll Calls on a Bill: 5761 (2003-04)**

Brief Description: Modifying requirements for industrial projects of statewide significance.

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#### **2003 Regular Session**

Chamber: SENATE  
Bill No.: SSB 5761  
Description: 3RD READING & FINAL PASSAGE  
Item No.: 9  
Transcript No.: 58  
Date: 03-11-2003

Yeas: 48 Nays: 00 Absent: 00 Excused: 01

Voting yea: Senators Benton, Brandland, Brown, Carlson, Deccio, Doumit, Eide, Esser, Fairley, Finkbeiner, Franklin, Fraser, Hale, Hargrove, Haugen, Hewitt, Honeyford, Horn, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Prentice, Rasmussen, Reardon, Regala, Roach, Rossi, Schmidt, Sheahan, Sheldon, B., Sheldon, T., Shin, Spanel, Stevens, Swecker, Thibaudeau, West, Winsley, Zarelli

Excused: Senator Poulsen

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#### **2003 Regular Session**

Chamber: HOUSE  
Bill No.: SSB 5761  
Description: FINAL PASSAGE  
Item No.: 16  
Transcript No.: 87  
Date: 04-09-2003

Yeas: 96 Nays: 00 Absent: 00 Excused: 02

Voting yea: Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Benson, Berkey, Blake, Boldt, Buck, Bush, Cairnes, Campbell, Carrell, Chandler, Chase, Clements, Clibborn, Cody, Condotta, Conway, Cooper, Cox, Crouse, Darneille, DeBolt, Delvin, Dickerson, Dunshee, Eickmeyer, Ericksen, Flannigan, Fromhold, Gombosky, Grant, Haigh, Hankins, Hatfield, Hinkle, Holmquist, Hudgins, Hunt, Hunter, Jarrett, Kagi, Kenney, Kessler, Kirby, Kristiansen, Lantz, Linville, Lovick, Mastin, McCoy, McDermott, McDonald, McIntire, McMahan, McMorris, Mielke, Miloscia,

Moeller, Morrell, Morris, Murray, Newhouse, Nixon, O'Brien, Orcutt,  
Pearson, Pettigrew, Pflug, Priest, Quall, Roach, Rockefeller, Romero,  
Ruderman, Santos, Schindler, Schoesler, Schual-Berke, Sehlin, Shabro,  
Simpson, Skinner, Sommers, Sullivan, Sump, Talcott, Tom, Upthegrove,  
Veloria, Wallace, Woods, and Mr. Speaker

Excused: Representatives Edwards, Wood

## **ENGROSSED SUBSTITUTE SENATE BILL 5766**

*Providing businesses with notice of certain administrative rules*

### **PROGRAM/AGENCY IMPACTS**

This bill would require agencies to provide notice to businesses either before or within 200 days of the effective date of a rule. The businesses that must be notified are those businesses which, if they violate the rule, will be subject to a penalty, assessment, or administrative sanction. Notification must be made by email, when possible, and include information on the rule change, refer to the appeal process in RCW 34.05.330, describe the requirements of the rule, describe how to obtain technical information, and include contact information.

Ecology must develop and use a notification process to “communicate with the public regarding postadoption notice”.

### **RESOURCE IMPACTS**

No additional resources were provided. Currently when a rule is adopted it is Ecology’s policy to send out notification to affected parties. In order to comply with this new law, Ecology will work more aggressively at collecting affected party e-mail addresses so that notification can be made more frequently by email.

### **WORK PLAN**

The Rules Unit will take lead on developing and documenting the process described in the bill language.

- By July 27, 2003 a *Rule Adoption* Notification template will be finalized to be used to comply with the requirements stated in this bill.
- Current distribution lists, databases, mailing lists, etc. will be reviewed and where possible these existing lists will be used to send out the notices.
- A process will be documented to be used by Ecology to make adoption notifications for each rule making.

**Contact person:** Jerry Thielen – Rules Unit of Governmental Relations;  
**Phone:** 360/407-7551; **E-mail:** [jthi461@ecy.wa.gov](mailto:jthi461@ecy.wa.gov)

# FINAL BILL REPORT

## ESSB 5766

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C 246 L 03

Synopsis as Enacted

**Brief Description:** Providing businesses with notice of certain administrative rules.

**Sponsors:** Senate Committee on Government Operations & Elections (originally sponsored by Senators Roach, Reardon, Kastama, Stevens, McCaslin, Esser, McAuliffe, Rasmussen and Hale).

**Senate Committee on Government Operations & Elections**  
**House Committee on State Government**  
**House Committee on Appropriations**

**Background:** The primary institutional means for providing notice to the public of agencies' rule-making activities is the Washington Administrative Code published by the Code Reviser in the Washington State Register. Persons interested in receiving copies of particular rule-making documents may request them from the relevant agency's rules coordinator. There are some sections of the Administrative Procedure Act that state that all persons who request a rule-making document from an agency shall be provided with one.

All rules proposed by an agency must either provide a Small Business Economic Impact Statement (SBEIS) or provide an explanation why the SBEIS was not prepared. The SBEIS process requires the agency to provide notice of a proposed rule to small business either by direct notification to known interested small businesses or trade organizations or by notification to relevant trade journals.

**Summary:** For some newly effective rules, the departments of Employment Security, Labor and Industries, Ecology and Natural Resources must notify businesses affected by the rule of the rule's requirements, how the business can appeal the rule and how to get help in complying with the rule. This requirement applies from before, or up to 200 days after, the rule's effective date and only applies to rules that impose additional requirements on businesses, the violation of which subjects a business to penalties or sanctions. The requirement does not apply to emergency rules. These agencies must develop a process to make this communication.

**Votes on Final Passage:**

Senate	48	0
House	93	0

**Effective:** July 27, 2003

### **Roll Calls on a Bill: 5766 (2003-04)**

Brief Description: Providing businesses with notice of certain administrative rules.

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#### **2003 Regular Session**

Chamber: SENATE  
Bill No.: ESSB 5766  
Description: 3RD READING & FINAL PASSAGE  
Item No.: 19  
Transcript No.: 53  
Date: 03-06-2003

Yeas: 48 Nays: 00 Absent: 00 Excused: 01

Voting yea: Senators Benton, Brandland, Brown, Carlson, Deccio, Doumit, Eide, Esser, Fairley, Finkbeiner, Franklin, Fraser, Hale, Hargrove, Haugen, Hewitt, Honeyford, Horn, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Poulsen, Prentice, Rasmussen, Reardon, Regala, Roach, Schmidt, Sheahan, Sheldon, B., Sheldon, T., Shin, Spanel, Stevens, Swecker, Thibaudeau, West, Winsley, Zarelli

Excused: Senator Rossi

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#### **2003 Regular Session**

Chamber: HOUSE  
Bill No.: ESSB 5766  
Description: FINAL PASSAGE  
Item No.: 28  
Transcript No.: 92  
Date: 04-14-2003

Yeas: 93 Nays: 00 Absent: 00 Excused: 05

Voting yea: Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Benson, Berkey, Blake, Boldt, Buck, Bush, Cairnes, Campbell, Carrell, Chandler, Chase, Clements, Clibborn, Cody, Condotta, Conway, Cooper, Crouse, Darneille, DeBolt, Delvin, Dickerson, Dunshee, Eickmeyer, Ericksen, Flannigan, Fromhold, Gombosky, Haigh, Hankins, Hatfield, Hinkle, Holmquist, Hudgins, Hunt, Hunter, Jarrett, Kagi, Kenney, Kirby, Kristiansen, Lantz, Linville, Lovick, Mastin, McCoy, McDermott, McDonald, McIntire, McMahan, McMorris, Mielke, Miloscia, Moeller, Morrell, Morris,

Murray, Newhouse, Nixon, O'Brien, Orcutt, Pearson, Pettigrew, Pflug, Priest, Quall, Roach, Rockefeller, Romero, Ruderman, Santos, Schindler, Schoesler, Schual-Berke, Sehlin, Shabro, Simpson, Skinner, Sommers, Sullivan, Sump, Talcott, Tom, Upthegrove, Veloria, Wallace, Wood, Woods

Excused: Representatives Cox, Edwards, Grant, Kessler, and Mr. Speaker

## **ENGROSSED SUBSTITUTE SENATE BILL 5776**

*Providing an appeal process for state agency and local government permit decisions for economic development projects*

### **PROGRAM/AGENCY IMPACTS**

This new law:

- authorizes a uniform, expedited, and coordinated permit appeal process for qualifying projects that:
  - are located in counties designated as distressed areas and rural natural resources impact areas as defined in statute;
  - provide at least 30 full-time jobs; and
  - are designated as qualifying projects by the Office of Regulatory Assistance;
- establishes a designation process whereby:
  - a project applicant must request designation as a qualifying project by the Office of Regulatory Assistance within 30 days after the first permit application for the project (between the effective date of the act and December 31, 2010); and
  - the office must make a determination on the request, and, if designated, notify permit agencies and the public of the designation;
- directs that permit decision appeals for qualifying projects be consolidated before a single board within the Environmental Hearings Office, and that any subsequent appeal of such be sent directly to the Court of Appeals (via a certification step before Thurston County Superior Court);
- exempts certain permits, including certifications by the Energy Facility Site Evaluation Council and local health districts, from the consolidated appeal process;
- establishes that, if applicable, the appeal process be the exclusive process for review of final state agency and local government environmental and land use permit decisions for qualifying projects; and
- declares that all existing environmental and land use permit review processes and standards are unaffected and remain intact.

### **RESOURCE IMPACTS**

No new resources were provided to Ecology to implement ESSB 5776.

## WORK PLAN

While ESSB 5776 is not an Ecology measure per se, nor a measure for which Ecology received new or additional resources, it is a measure Ecology supports and will work in close partnership with the Office of Attorney General, Office of Regulatory Assistance, and the State Environmental Hearings Office to implement. Ecology looks forward to working with the above parties, as well as the other environmental and natural resource agencies likely involved in any such appeals, to implement and learn from this first statutory application of an expedited appeals process. Ecology will defer to the above parties for necessary leadership and direction in the weeks and months ahead.

**Contact person:** Please contact either of the following for more information:

Sue Mauermann – Special Assistant for Regulatory Improvement;

**Phone:** 360/407-0291; **E-mail:** [smau461@ecy.wa.gov](mailto:smau461@ecy.wa.gov)

Scott Boettcher – Senior Regulatory Improvement Advisor; **Phone:** 360/407-7564;

**E-mail:** [sboe461@ecy.wa.gov](mailto:sboe461@ecy.wa.gov)



# FINAL BILL REPORT

## ESSB 5776

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C 393 L 03

Synopsis as Enacted

**Brief Description:** Providing an appeal process for state agency and local government permit decisions for economic development projects.

**Sponsors:** Senate Committee on Land Use & Planning (originally sponsored by Senators Doumit, Morton, Hargrove, Mulliken, Rasmussen, Swecker, Haugen, Zarelli, Reardon, Parlette, McAuliffe and Winsley).

**Senate Committee on Land Use & Planning**

**Senate Committee on Ways & Means**

**House Committee on State Government**

**House Committee on Appropriations**

**Background:** Under current statutes, numerous environmental and land use permits may be required from state and local agencies for a single development project proposal. Each permit requires a separate application, review process, and decision. Separate statutory provisions may apply for appeal of the final permit decisions. In 2002, the Legislature found that a coordinated permitting process, subject to the applicable environmental laws, is vital to the state's economic well-being. The 2002 Legislature created a permit coordination option for project applicants, administered by the Office of Permit Assistance by written agreement with the project applicant and participating state agencies. Existing permit decision and appeal procedures are unaffected by the project permit coordination.

**Summary:** A uniform, expedited, and coordinated permit appeal process is authorized for qualifying projects (1) located in counties designated as distressed areas and rural natural resources impact areas as defined in statute, (2) providing at least 30 full-time jobs, and (3) designated as qualifying projects by the Office of Permit Assistance. Certain permits, including certifications by the Energy Facility Site Evaluation Council and local health districts, are exempt. If applicable, this appeal process is the exclusive process for review of final state agency and local government environmental and land use permit decisions on the qualifying project. All existing environmental and land use permit review processes and standards are unaffected and remain intact.

A project applicant must request designation as a qualifying project by the office within 30 days after the first permit application for the project after the effective date of the act, but no later than December 31, 2010. The office must make a determination on the request, and, if designated, must notify permit agencies and the public of the designation.

Permit decision appeals for a qualifying project are consolidated before a single board within the Environmental Hearings Office. Board membership is constituted as the Shorelines Hearings Board. Board procedures, timelines, and standards of review are set forth. If the agency permit decision included a quasi-judicial hearing, then the board review is on the agency decision record. If no hearing was included, then the board conducts a de novo review of the permit decision.

Appeals from the board decision on the qualifying project are filed in superior court for Thurston County, but the superior court must certify the appeal for direct review by the Court of Appeals (with jurisdiction for the county in which the project is located) if the superior court makes certain factual determinations as set forth in the bill.

**Votes on Final Passage:**

Senate	45	4	
House	88	8	(House amended)
Senate	31	17	(Senate concurred)

**Effective:** May 20, 2003

### Roll Calls on a Bill: 5776 (2003-04)

Brief Providing an appeal process for state agency permit decisions.  
Description: **Revised for 1st Substitute:** Providing an appeal process for state agency and local government permit decisions for economic development projects.

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#### 2003 Regular Session

Chamber: SENATE  
Bill No.: ESSB 5776  
Description: 3RD READING & FINAL PASSAGE  
Item No.: 10  
Transcript No.: 65  
Date: 03-18-2003

Yeas: 45 Nays: 04 Absent: 00 Excused: 00

Voting Senators Benton, Brandland, Brown, Carlson, Deccio, Doumit, Eide, Esser,  
yea: Finkbeiner, Franklin, Hale, Hargrove, Haugen, Hewitt, Honeyford, Horn,  
Jacobsen, Johnson, Kastama, Keiser, Kline, McAuliffe, McCaslin, Morton,  
Mulliken, Oke, Parlette, Poulsen, Prentice, Rasmussen, Reardon, Regala,  
Roach, Rossi, Schmidt, Sheahan, Sheldon, B., Sheldon, T., Shin, Spanel,  
Stevens, Swecker, West, Winsley, Zarelli

Voting Senators Fairley, Fraser, Kohl-Welles, Thibaudeau  
nay:

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#### 2003 Regular Session

Chamber: HOUSE  
Bill No.: ESSB 5776  
Description: FP AS AMD BY THE HOUSE  
Item No.: 38  
Transcript No.: 92  
Date: 04-14-2003

Yeas: 88 Nays: 08 Absent: 00 Excused: 02

Voting Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Benson,  
yea: Berkey, Blake, Boldt, Buck, Bush, Cairnes, Campbell, Carrell, Chandler,  
Clements, Clibborn, Cody, Condotta, Conway, Cooper, Crouse, Darneille,  
DeBolt, Delvin, Dickerson, Dunshee, Eickmeyer, Ericksen, Flannigan,  
Fromhold, Gombosky, Grant, Haigh, Hankins, Hatfield, Hinkle, Holmquist,  
Hudgins, Hunt, Hunter, Jarrett, Kagi, Kenney, Kessler, Kristiansen, Lantz,

Linville, Lovick, Mastin, McCoy, McDonald, McIntire, McMahan, McMorris, Mielke, Miloscia, Morrell, Morris, Murray, Newhouse, Nixon, O'Brien, Orcutt, Pearson, Pettigrew, Pflug, Priest, Quall, Roach, Rockefeller, Ruderman, Santos, Schindler, Schoesler, Sehlín, Shabro, Skinner, Sommers, Sullivan, Sump, Talcott, Tom, Voloria, Wallace, Wood, Woods, and Mr. Speaker

Voting Representatives Chase, Kirby, McDermott, Moeller, Romero, Schual-  
nay: Berke, Simpson, Upthegrove

Excused: Representatives Cox, Edwards

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### 2003 Regular Session

Chamber: SENATE

Bill No.: ESSB 5776

Description: FINAL PASSAGE AS AMENDED BY THE HOUSE

Item No.: 15

Transcript No.: 105

Date: 04-27-2003

Yeas: 31 Nays: 17 Absent: 01 Excused: 00

Voting Senators Brown, Deccio, Doumit, Eide, Fairley, Franklin, Fraser, Hargrove,  
yea: Haugen, Jacobsen, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe,  
McCaslin, Morton, Oke, Poulsen, Prentice, Rasmussen, Reardon, Regala,  
Sheldon, B., Sheldon, T., Shin, Spanel, Swecker, Thibaudeau, Winsley,  
Zarelli

Voting Senators Benton, Brandland, Carlson, Esser, Finkbeiner, Hale, Hewitt,  
nay: Honeyford, Horn, Johnson, Mulliken, Parlette, Rossi, Schmidt, Sheahan,  
Stevens, West

Absent: Senator Roach

## **SUBSTITUTE SENATE BILL 5787**

*Protecting water quality*

### **PROGRAM/AGENCY IMPACTS**

This legislation authorizes Ecology to require the use of leaching tests allowed under the rules adopted under the Model Toxics Control Act (including the synthetic precipitation leaching procedure (SPLP)) to ensure that construction projects involving the use of fill material under a 401 water quality certification do not pose a threat to water quality. This applies retroactively to water quality certifications and administrative orders issued by Ecology. It is not intended to limit Ecology's authority under RCW 90.48.

SSB 5787 requires Ecology to identify leaching tests utilized for evaluating potential impacts to water quality and to assess whether these leaching tests provide appropriate methods for analyzing water quality. A report must be submitted to the Legislature by December 31, 2003.

### **RESOURCE IMPACTS**

This bill will be implemented with existing staff resources and the hiring of a consultant using existing Toxics Cleanup Program contract funds.

### **WORK PLAN**

Projects applying to use a leaching test to predict water quality impacts under section 401 of the federal clean water act will be reviewed as part of the normal permit application process. This review will be done by existing Shorelands and Environmental Assessment Program staff, with assistance from other Ecology staff, as necessary.

The study of leaching test methods called for in Section 2 of the bill will be coordinated by Toxics Cleanup Program staff. A preliminary schedule is as follows.

July, 2003	Scope of study developed
August, 2003	Advertise for consultant
September, 2003	Select consultant and sign contract
October, 2003	Consultant conducts literature review
November, 2003	Consultant prepares draft report
December 31, 2003	Final report submitted to the Legislature

**Contact person:** Pete Kmet – Toxics Cleanup Program;

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# FINAL BILL REPORT

## SSB 5787

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C 210 L 03

Synopsis as Enacted

**Brief Description:** Protecting water quality.

**Sponsors:** Senate Committee on Natural Resources, Energy & Water (originally sponsored by Senators Morton, Prentice, Hale, Jacobsen, Kohl-Welles, Hewitt, Doumit and Horn).

**Senate Committee on Natural Resources, Energy & Water**  
**House Committee on Agriculture & Natural Resources**

**Background:** The Department of Ecology is the state water pollution control agency responsible for implementing all state and federal water pollution control laws and regulations. This includes providing certification that permits issued by federal agencies comply with water quality standards, according to section 401 of the federal Clean Water Act.

**Summary:** For purposes of issuing water quality certifications under section 401 of the federal Clean Water Act and administrative orders under state law, the Department of Ecology is authorized to require use of a valid and reliable leaching test included in regulations adopted under the state Model Toxics Control Act to evaluate the suitability of fill material that will be placed in waters of the state. Any such requirement by the department in the past is ratified and approved as a valid and reliable method for determining that concentrations of chemicals in fill material do not pose an unacceptable risk of violating water quality standards and is in effect as imposed by the department for all work not completed by June 1, 2003. The Department of Ecology is directed to identify and assess the effectiveness of leaching tests for evaluating impacts of imported fill material, and to report the test list and any methodology gaps to the Legislature by December 31, 2003.

**Votes on Final Passage:**

Senate	37	12
House	61	25 (House amended)
Senate	38	10 (Senate concurred)

**Effective:** May 9, 2003

## **Roll Calls on a Bill: 5787 (2003-04)**

Brief Description: Protecting water quality.

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### **2003 Regular Session**

Chamber: SENATE  
Bill No.: SSB 5787  
Description: 3RD READING & FINAL PASSAGE  
Item No.: 34  
Transcript No.: 65  
Date: 03-18-2003

Yeas: 37 Nays: 12 Absent: 00 Excused: 00

Voting Senators Benton, Brandland, Deccio, Doumit, Esser, Finkbeiner, Franklin,  
yea: Hale, Hargrove, Haugen, Hewitt, Honeyford, Horn, Jacobsen, Johnson,  
Kastama, Kohl-Welles, McCaslin, Morton, Mulliken, Oke, Parlette, Prentice,  
Reardon, Regala, Roach, Rossi, Schmidt, Sheahan, Sheldon, B., Sheldon,  
T., Shin, Stevens, Swecker, West, Winsley, Zarelli

Voting Senators Brown, Carlson, Eide, Fairley, Fraser, Keiser, Kline, McAuliffe,  
nay: Poulsen, Rasmussen, Spanel, Thibaudeau

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### **2003 Regular Session**

Chamber: HOUSE  
Bill No.: SSB 5787  
Description: FP AS AMD BY THE HOUSE  
Item No.: 8  
Transcript No.: 96  
Date: 04-18-2003

Yeas: 61 Nays: 25 Absent: 00 Excused: 12

Voting Representatives Alexander, Anderson, Armstrong, Bailey, Berkey, Blake,  
yea: Buck, Bush, Cairnes, Campbell, Carrell, Chandler, Chase, Clements,  
Clibborn, Condotta, Conway, Cooper, Eickmeyer, Ericksen, Flannigan,  
Fromhold, Gombosky, Grant, Hankins, Hatfield, Holmquist, Hunter,  
Jarrett, Kenney, Kessler, Kirby, Kristiansen, Linville, Lovick, Mastin,  
McDonald, McMahan, McMorris, Morrell, Morris, Murray, Newhouse,  
Orcutt, Pearson, Pettigrew, Pflug, Quall, Roach, Ruderman, Sehlin,  
Shabro, Sommers, Sullivan, Sump, Talcott, Tom, Wallace, Wood, Woods,  
and Mr. Speaker

Voting Representatives Cody, Darneille, Dickerson, Dunshee, Haigh, Hinkle,  
nay: Hudgins, Hunt, Kagi, Lantz, McCoy, McDermott, McIntire, Miloscia,  
Moeller, Nixon, O'Brien, Priest, Rockefeller, Romero, Santos, Schual-  
Berke, Simpson, Upthegrove, Veloria

Excused: Representatives Ahern, Benson, Boldt, Cox, Crouse, DeBolt, Delvin,  
Edwards, Mielke, Schindler, Schoesler, Skinner

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### 2003 Regular Session

Chamber: SENATE  
Bill No.: SSB 5787  
Description: FINAL PASSAGE AS AMENDED BY THE HOUSE  
Item No.: 8  
Transcript No.: 101  
Date: 04-23-2003

Yeas: 38 Nays: 10 Absent: 00 Excused: 01

Voting Senators Benton, Brandland, Deccio, Doumit, Esser, Finkbeiner, Franklin,  
yea: Hale, Hargrove, Haugen, Hewitt, Honeyford, Horn, Jacobsen, Johnson,  
Kastama, Kohl-Welles, McAuliffe, McCaslin, Morton, Mulliken, Oke,  
Parlette, Prentice, Rasmussen, Reardon, Regala, Roach, Rossi, Schmidt,  
Sheahan, Sheldon, B., Sheldon, T., Shin, Stevens, Swecker, Winsley,  
Zarelli

Voting Senators Brown, Carlson, Eide, Fairley, Fraser, Keiser, Kline, Poulsen,  
nay: Spanel, Thibaudeau

Excused: Senator West



## **ENGROSSED SUBSTITUTE SENATE BILL 5889**

*Concerning a livestock nutrient management program*

### **PROGRAM/AGENCY IMPACTS**

This bill expands the current Dairy Nutrient Management Act to cover all dairies and other livestock operations that meet the federal definition of an Animal Feeding Operation (AFO) or Concentrated Animal Feeding Operation (CAFO). The bill also transfers responsibility for developing and managing the state AFO/CAFO program from Ecology to the Department of Agriculture (WSDA).

A Memorandum of Understanding (MOU) will be developed between the two agencies to carry out this transfer of authority, guide inter-agency coordination and implementation of the bill.

Ecology will no longer perform dairy or AFO/CAFO facility field inspections, or carry out any of the administrative requirements under Chapter 90.64 RCW.

Ecology may delegate to WSDA certain limited authority under Chapter 90.48 RCW to implement and enforce water quality laws relating to this program.

A new Livestock Nutrient Management Development and Oversight Committee (LDOC) is created to be staffed by WSDA. Ecology will participate on the committee.

WSDA is directed to seek delegation of the CAFO National Pollution Discharge Elimination System (NPDES) program from EPA. During the interim, Ecology will continue to issue NPDES permits for CAFOs, including re-issuing the Dairy General NPDES permit and development of a new non-dairy CAFO general permit.

### **RESOURCE IMPACTS**

The state funding for the dairy/CAFO program was reduced by half from previous budgets and allocated to WSDA rather than Ecology (a budget reduction to Ecology of \$800,000).

No resources were provided Ecology to participate on the LDOC, provide training and assistance to WSDA as the program is developed, or coordinate on delegation issues under both state and federal law. This work will be done out of other program funding.

Ecology and WSDA have agreed that Ecology will continue to act as the NPDES permit fee setting and collecting agency. Because Ecology will continue to be

responsible for CAFO NPDES permits until federal delegation to WSDA occurs, the CAFO permit fees will be used by Ecology to support the permit development efforts. Funds generated by these permits will transfer to WSDA when EPA delegates the CAFO NPDES authority to WSDA and WSDA takes over this work. Currently CAFO permit fees total about \$55,000 per year.

## **WORK PLAN**

Ecology is currently working with WSDA to complete the MOU to transition the program. The target date for completion of the MOU is September, 2003. Subsequently, the MOU between Ecology, the Conservation Commission and the Conservation Districts will be amended to include WSDA.

Ecology will make use of existing program staff to provide support for the transition of the CAFO program to WSDA and to continue federally authorized work until Clean Water Act delegation of the CAFO program to WSDA occurs. The target date for submittal of the delegation request is June 2005.

Some on-going coordination between WSDA and Ecology will be needed both short and long term regarding water quality issues (for example, 303d listings and TMDLs) and other environmental issues (such as air quality problems) where livestock are involved. In addition, the agencies will coordinate on decisions regarding smaller livestock operations that may increase in size to the AFO/CAFO categories.

Ecology will provide limited initial training regarding water quality laws, inspections, monitoring, compliance, and permits to WSDA staff. Other partners such as the Natural Resources Conservation Service, WSU Extension and Conservation Districts will be asked to participate in the training. This will be completed by December 2003.

Access to the Ecology NPDES permit data system will be provided to WSDA so they can enter facility information and produce reports. Training on the system as well as a desktop data base will be provided. Basic support for the permit data base and uploads of data to EPA will continue to be provided by Ecology staff.

Ecology's Director will assign a designee and a backup staff to participate in the work of the LDOC starting with the first meeting in September 2003. The committee will function until 2006. In cooperation with WSDA, Ecology will request the LDOC to act as Ecology's advisory committee for development of the CAFO general permits over the next two years.

Ecology will assist WSDA in the process of seeking Clean Water Act delegation from EPA for the NPDES CAFO program. This process is expected to take at least two years.

Ecology, in coordination with WSDA and the LDOC, will reissue the dairy general NPDES permit and will issue a non-dairy general NPDES permit by June 2005. These general permits and applications for coverage under them by individual facilities will be consolidated to Ecology Headquarters from the regional offices. WSDA field inspections will be relied upon to review facilities prior to permit issuance.

**Contact person:** Dave Peeler – Water Quality Program; **Phone:** 360/407-6489;  
**E-mail:** [dpee461@ecy.wa.gov](mailto:dpee461@ecy.wa.gov)

# FINAL BILL REPORT

## ESSB 5889

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C 325 L 03

Synopsis as Enacted

**Brief Description:** Concerning a livestock nutrient management program.

**Sponsors:** Senate Committee on Agriculture (originally sponsored by Senators Swecker and Rasmussen).

**Senate Committee on Agriculture**

**House Committee on Agriculture & Natural Resources**

**House Committee on Appropriations**

**Background:** In early 2003, the Environmental Protection Agency adopted rules that affect how specified animal feeding operations are to be regulated for the purposes of federal water quality laws.

In 1998, the State of Washington enacted the Dairy Nutrient Management Act that required dairy farms to develop plans to protect water quality by July 1, 2002. These plans are required to be implemented by December 31, 2003. Larger feed lots currently hold National Pollution Discharge Elimination System (NPDES) permits. The current program in Washington State is administered by the Department of Ecology.

**Summary:** The Legislature intends that there be a fully functioning state program for confined animal feeding operations by 2006 and that a single program apply to all livestock sectors. The program should develop reasonable financial assistance, educational and technical assistance, and provide for periodic inspection and enforcement.

To achieve this, a committee is established to examine the recently adopted federal regulations and to develop a program to be administered by the Department of Agriculture that meets the time frames contained in the federal rules. The committee must provide a report to the Legislature by December 1, 2003 that contains the results of its evaluation and draft legislation to initiate the program.

Elements that must be evaluated by the committee include:

- a process for adopting standards and developing plans that meet these standards;
- a process to transition current NPDES permits into the new program; and
- a determination of what other institutional relationships are needed or desirable, including whether any functions are to be performed by conservation districts.

The draft legislation must include:

- the statutory changes including a time line to phase in the program that will comply with the minimum requirements of federal and state water quality laws;
- the statutory changes necessitated by the transfer of the Dairy Nutrient Management Act from the Department of Ecology to the Department of Agriculture;
- continued inspection of dairy operations at least once every two years;
- an outreach and education program; and
- annual reporting to the Legislature on the progress for implementing the program.

The Livestock Nutrient Management Program Development and Oversight Committee is created composed of the following representatives:

- the Director of Agriculture, who serves as chair;
- the Director of Ecology;
- the federal Environmental Protection Agency;
- a commercial shellfish grower;
- an environmental organization;
- a tribal government;
- the conservation district association;
- Washington State University;
- three dairy producers;
- two beef cattle producers;
- a poultry producer;
- a feed lot; and
- any other segment determined by the director to be subject to the federal rules.

The committee is staffed by the Department of Agriculture. The department may request staff assistance be assigned by the United States Environmental Protection Agency. The committee must establish a work plan that includes a list of tasks and projected completion date for each task. The committee may establish a subcommittee for each of the major industry segments that is covered by the recently adopted federal rules. Subcommittees must report back to the full committee. The committee takes effect on July 1, 2003, and expires on June 30, 2006.

The Dairy Nutrient Management Program is transferred to the Department of Agriculture effective on July 1, 2003. The transfer includes all powers and duties, records and files, funds and assets, appropriations, and existing contracts and obligations. If apportionment of budgeted funds is required, the Director of Financial Management shall certify the apportionments. The transfer takes effect on July 1, 2003.

The authority of the Department of Ecology to issue water quality permits and take action regarding water quality issues for animal feeding operations and concentrated

animal feeding operations after transfer of the dairy nutrient management program to the Department of Agriculture is preserved: (a) unless the Department of Ecology delegates its federal Clean Water Act authority to the Department of Agriculture; and (b) until the delegation receives federal approval.

The Department of Ecology is authorized to delegate its water quality authority (including permits) regarding these animal feeding operations. The Department of Agriculture is required to reach agreement with the director of Ecology on the program elements until the re-delegation of authority receives federal approval. Compliance with the state program must achieve compliance with federal and state water quality laws.

**Votes on Final Passage:**

Senate	37	11	
House	97	0	(House amended)
Senate	39	8	(Senate concurred)

**Effective:** July 1, 2003 (Sections 2 and 6)  
July 27, 2003

## **Roll Calls on a Bill: 5889 (2003-04)**

Brief Description: Concerning a livestock nutrient management program.

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### **2003 Regular Session**

Chamber: SENATE  
Bill No.: ESSB 5889  
Description: 3RD READING & FINAL PASSAGE  
Item No.: 24  
Transcript No.: 66  
Date: 03-19-2003

Yeas: 37 Nays: 11 Absent: 00 Excused: 01

Voting Senators Benton, Brandland, Carlson, Deccio, Doumit, Eide, Esser,  
yea: Finkbeiner, Hale, Hargrove, Haugen, Hewitt, Honeyford, Jacobsen,  
Johnson, Kastama, Keiser, Kline, McCaslin, Morton, Mulliken, Oke,  
Parlette, Rasmussen, Reardon, Roach, Rossi, Schmidt, Sheahan,  
Sheldon, B., Sheldon, T., Shin, Stevens, Swecker, West, Winsley, Zarelli  
Voting Senators Brown, Fairley, Franklin, Fraser, Kohl-Welles, McAuliffe,  
nay: Poulsen, Prentice, Regala, Spanel, Thibaudeau  
Excused: Senator Horn

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### **2003 Regular Session**

Chamber: HOUSE  
Bill No.: ESSB 5889  
Description: FP AS AMD BY THE HOUSE  
Item No.: 9  
Transcript No.: 104  
Date: 04-26-2003

Yeas: 97 Nays: 00 Absent: 00 Excused: 01

Voting Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Benson,  
yea: Berkey, Blake, Boldt, Buck, Bush, Cairnes, Campbell, Carrell, Chandler,  
Chase, Clements, Clibborn, Cody, Condotta, Conway, Cooper, Cox,  
Crouse, Darneille, DeBolt, Delvin, Dickerson, Dunshee, Edwards,  
Eickmeyer, Ericksen, Flannigan, Fromhold, Gombosky, Grant, Haigh,  
Hankins, Hatfield, Hinkle, Holmquist, Hudgins, Hunt, Hunter, Jarrett, Kagi,  
Kenney, Kessler, Kirby, Kristiansen, Lantz, Linville, Lovick, Mastin,  
McCoy, McDermott, McDonald, McIntire, McMahan, McMorris, Mielke,  
Miloscia, Moeller, Morrell, Morris, Murray, Newhouse, Nixon, O'Brien,

Orcutt, Pearson, Pettigrew, Pflug, Priest, Quall, Roach, Rockefeller, Romero, Ruderman, Santos, Schindler, Schoesler, Sehlin, Shabro, Simpson, Skinner, Sommers, Sullivan, Sump, Talcott, Tom, Upthegrove, Veloria, Wallace, Wood, Woods, and Mr. Speaker

Excused: Representative Schual-Berke

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**2003 Regular Session**

Chamber: SENATE  
Bill No.: ESSB 5889  
Description:  
Item No.: 25  
Transcript No.: 104  
Date: 04-26-2003

Yeas: 39 Nays: 08 Absent: 00 Excused: 02

Voting yea: Senators Benton, Brandland, Brown, Carlson, Deccio, Doumit, Eide, Esser, Fairley, Hale, Hargrove, Haugen, Hewitt, Honeyford, Horn, Jacobsen, Johnson, Kastama, Keiser, McCaslin, Morton, Mulliken, Oke, Poulsen, Rasmussen, Reardon, Roach, Rossi, Schmidt, Sheahan, Sheldon, B., Sheldon, T., Shin, Stevens, Swecker, Thibaudeau, West, Winsley, Zarelli

Voting nay: Senators Franklin, Fraser, Kline, Kohl-Welles, McAuliffe, Prentice, Regala, Spanel

Excused: Senators Finkbeiner, Parlette



## **ENGROSSED SUBSTITUTE SENATE BILL 5938**

*Updating financial responsibility laws for vessels*

### **PROGRAM/AGENCY IMPACTS**

ESSB 5938 amends existing state financial responsibility requirements (under RCW 88.40) for large commercial vessels, and for marine facilities that transfer oil either to or from certain vessels. Financial responsibility is the term referring to the requirement that companies which have the potential to spill large quantities of oil, be able to demonstrate adequate financial capacity to pay for the clean-up of major oil spills, and pay for potential damages resulting from such spills.

This legislation increased the state's existing financial responsibility requirements above federal limits for most classes of vessels. These new requirements are generally consistent with requirements in force in the states of California and Alaska. Vessel's that possess certificates of financial responsibility (COFRs) from California or Alaska will satisfy the new requirements in most cases. However, federal COFRs are no longer adequate to demonstrate compliance with the new more stringent Washington state requirements except for barges carrying hazardous substances. Regulated entities must be able to show evidence of financial responsibility to the Department of Ecology.

Section 2 of ESSB 5938 amends RCW 88.40.011 changing and adding several important definitions. Section 3 amends RCW 88.40.020 to increase required financial responsibility amounts for certain vessels.

*Note - ESSB 6074 (another act relating to vessels) also passed this session. This bill also amended RCW 88.40. This legislation works in concert with ESSB 5938 and changes applicable definitions with respect to industry segments affected by the changes in financial responsibility provided for in ESSB 5938.*

### **RESOURCE IMPACTS**

Prior to this legislation, Washington did not have a program to verify compliance with state financial responsibility requirements. The Department of Ecology relied upon existing U.S. Coast Guard and California COFRs, and statutory exemptions. ESSB 5938 requires an increase in regulatory monitoring to ensure vessel's either comply with comparable state programs or are exempt from the statute.

No additional appropriation was provided to implement ESSB 5938 and ESSB 6074. Ecology has determined that approximately 0.5 FTE will be required to implement the basic provisions of the legislation. This workload will be assimilated by existing policy, vessel inspection, and data management personnel in the Ecology's Spill

Prevention, Preparedness, and Response Program. However, in the unlikely event that a major rule-making is determined to be necessary to implement certain provisions of the legislation, Ecology may request a special appropriation during a future legislative session to complete that process.

## **WORK PLAN**

Routine Implementation: The Department of Ecology's Spill Prevention, Preparedness, and Response Program will monitor and verify compliance with financial responsibility for regulated vessels and facilities. Ecology plans to accept Certificates of Financial Responsibility (COFR) issued by the U.S. Coast Guard, state of California, and state of Alaska where the level of coverage meets Washington requirements. Ecology will evaluate evidence of financial responsibility provided by vessels that are not certified by these entities. Ecology may also verify compliance on a small sample of all vessels and regulated facilities with COFRs.

Ecology will utilize existing resources to:

- Complete implementation of a new Marine Information System (MIS) module that among other functions, will track the status of each vessel's COFR.  
September 2003
- Advise the regulated community of Ecology's intention to use existing vessel and facility inspection procedures to verify compliance.  
September 2003
- Commence office and ship board verification of COFRs.  
October 2003
- Obtain on-line access to U.S. Coast Guard, state of California, and state of Alaska COFR tracking systems; and possibly establish information sharing agreements with the Puget Sound Marine Exchange and Columbia River Merchants Exchange.  
Dates for system access are unknown at this time.
- Take regulatory actions for non-compliance.  
As appropriate

Rule Making: Financial responsibility levels under federal law for tank barges greater than 300 gross tons are consistent with ESSB 5938. This legislation provides Ecology with discretionary authority to initiate rulemaking to establish specific requirements for tank vessels of 300 gross tons or less.

**Contact person:** Jack Barfield – Spill Prevention, Preparedness and Response Program; Phone: 360/407-7483; E-mail: [jacb461@ecy.wa.gov](mailto:jacb461@ecy.wa.gov)

# FINAL BILL REPORT

## ESB 5938

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C 56 L 03

Synopsis as Enacted

**Brief Description:** Updating financial responsibility laws for vessels.

**Sponsors:** Senators Finkbeiner and Esser.

**Senate Committee on Highways & Transportation**  
**House Committee on Fisheries, Ecology & Parks**

**Background:** Current law establishes financial responsibility requirements for certain vessels that transport petroleum products, either as cargo or as fuel. The required documentation of financial responsibility must demonstrate that owners or operators of the vessels can cover the actual costs for removal of oil spills, for natural resource damages, and necessary expenses. The financial responsibility requirements for the different types of vessels are as follows:

- (1) Barges transporting hazardous substances: the greater of \$1 million or \$150/gross ton (Department of Ecology (DOE) may lower the financial responsibility requirement for smaller barges based on the quantity of cargo the barge can carry);
- (2) Tank vessels carrying oil: \$500 million (DOE may lower the financial responsibility requirement for tank vessels meeting certain standards); and
- (3) Certain cargo, fishing, and passenger vessels: the greater of \$500,000 or \$600/gross ton.

Owners or operators of tank vessels satisfy the financial responsibility requirement if they are members of an "international protection and indemnity mutual organization," commonly referred to as a "P&I club," with coverage up to the amounts required by statute.

DOE must deny entry to the waters of the state to any vessel that does not meet the state's financial responsibility requirements.

**Summary:** The definitions of "hazardous substances" and "oil" are updated and the definition of an "inland barge" is removed and replaced with a definition of "barge."

Fishing vessels are defined, and a specific financial responsibility requirement for these vessels is created as follows: (1) for vessels carrying predominately nonpersistent product, the greater of \$133.40 per incident, for each barrel of oil storage capacity, or \$1,334,000; and (2) for vessels carrying predominately

persistent product, the greater of \$400.20 per incident, for each barrel of oil storage capacity, or \$6,670,000.

The financial responsibility requirements for other vessels are revised as follows:

- (1) Barges transporting hazardous substances: the greater of \$5 million or \$300/gross ton
- (2) Tank vessels carrying oil: \$1 billion, after January 1, 2004  
(DOE may lower the financial responsibility requirements for smaller tank vessels based on the cargo the vessel can carry); and
- (3) Certain cargo or passenger vessels: \$300 million.

Owners or operators of cargo or passenger vessels that are members of a P&I club with coverage up to the amounts required by statute satisfy the financial responsibility requirement.

It is unlawful for vessels that do not meet the financial responsibility requirements to enter Washington waters, except when there is a risk of injury to the crew or passengers.

**Votes on Final Passage:**

Senate	49 0
House	96 0

**Effective:** July 27, 2003

## **Roll Calls on a Bill: 5938 (2003-04)**

Brief Description: Updating financial responsibility laws for vessels.

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### **2003 Regular Session**

Chamber: SENATE  
Bill No.: ESB 5938  
Description: 3RD READING & FINAL PASSAGE  
Item No.: 36  
Transcript No.: 64  
Date: 03-17-2003

Yeas: 49 Nays: 00 Absent: 00 Excused: 00

Voting Senators Benton, Brandland, Brown, Carlson, Deccio, Doumit, Eide, Esser,  
yea: Fairley, Finkbeiner, Franklin, Fraser, Hale, Hargrove, Haugen, Hewitt,  
Honeyford, Horn, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles,  
McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Poulsen, Prentice,  
Rasmussen, Reardon, Regala, Roach, Rossi, Schmidt, Sheahan, Sheldon,  
B., Sheldon, T., Shin, Spanel, Stevens, Swecker, Thibaudeau, West,  
Winsley, Zarelli

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### **2003 Regular Session**

Chamber: HOUSE  
Bill No.: ESB 5938  
Description: FINAL PASSAGE  
Item No.: 18  
Transcript No.: 87  
Date: 04-09-2003

Yeas: 96 Nays: 00 Absent: 00 Excused: 02

Voting Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Benson,  
yea: Berkey, Blake, Boldt, Buck, Bush, Cairnes, Campbell, Carrell, Chandler,  
Chase, Clements, Clibborn, Cody, Condotta, Conway, Cooper, Cox,  
Crouse, Darneille, DeBolt, Delvin, Dickerson, Dunshee, Eickmeyer,  
Ericksen, Flannigan, Fromhold, Gombosky, Grant, Haigh, Hankins,  
Hatfield, Hinkle, Holmquist, Hudgins, Hunt, Hunter, Jarrett, Kagi, Kenney,  
Kessler, Kirby, Kristiansen, Lantz, Linville, Lovick, Mastin, McCoy,  
McDermott, McDonald, McIntire, McMahan, McMorris, Mielke, Miloscia,  
Moeller, Morrell, Morris, Murray, Newhouse, Nixon, O'Brien, Orcutt,  
Pearson, Pettigrew, Pflug, Priest, Quall, Roach, Rockefeller, Romero,

Ruderman, Santos, Schindler, Schoesler, Schual-Berke, Sehlin, Shabro, Simpson, Skinner, Sommers, Sullivan, Sump, Talcott, Tom, Upthegrove, Voloria, Wallace, Woods, and Mr. Speaker

Excused: Representatives Edwards, Wood

## **SUBSTITUTE SENATE BILL 6012**

*Codifying shoreline rules*

### **PROGRAM/AGENCY IMPACTS**

The bill provides a schedule for updating all local shoreline master programs (SMP) between now and 2014. Each SMP submittal requires Ecology approval after conducting a public review process. Based on the schedule, expected workload will be manageable with existing staff. Funding for grants to local governments to do this work was also provided in the budget which will also have some workload implications but should not exceed current capacity. Funding plan calls for a steady flow of funds (2 million this biennium and 4 million in subsequent biennia through 2014) while schedule has definite spikes in the number of jurisdictions in various years. The intent is to rely on voluntary early adoption by some local governments based on the availability of funding. If enough local governments do not respond to this incentive, workload implications in the out years (2011-2014) could be significant.

### **RESOURCE IMPACTS**

See above.

### **WORK PLAN**

The bill is based on the expectation that Ecology will adopt rules mandated by earlier legislation. The Shoreline Management Guidelines rule is currently in the public review process and should be adopted before the end of 2003. Subsequent to adoption of that rule, the work load will be development of guidance materials on the Guidelines, outreach to local government staff and working with scheduled and voluntary early adopters throughout the process. This work is consistent with normal program activities and existing work plans.

**Contact person:** Tom Mark – Shoreland and Environmental Assistance Program;  
**Phone:** 360/407-7540; **E-mail:** [tmar461@ecy.wa.gov](mailto:tmar461@ecy.wa.gov)

# FINAL BILL REPORT

## SSB 6012

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C 262 L 03

Synopsis as Enacted

**Brief Description:** Codifying shoreline rules.

**Sponsors:** Senate Committee on Land Use & Planning (originally sponsored by Senators Mulliken, T. Sheldon and Morton).

**Senate Committee on Land Use & Planning**  
**House Committee on Local Government**  
**House Committee on Appropriations**

**Background:** The Department of Ecology has the legislative authority to adopt and implement shoreline management guidelines under the Shoreline Management Act.

In 1995, the Department of Ecology (DOE) was required by the Legislature to conduct a comprehensive update of the shoreline management guidelines. DOE adopted the final rule in 2000 regarding guidelines for local government master programs. In 2002, the Shorelines Hearings Board invalidated the guidelines and remanded the rule to DOE for further rule making, and DOE subsequently appealed the decision to superior court where the matter resulted in a settlement. However, because the court did not reinstate the prior existing guidelines, there are currently no guidelines for local government shoreline management.

DOE has proposed new shoreline management guidelines as a result of the court settlement. These proposed guidelines, however, have been a source of contention between the parties to the settlement and those that did not agree to the settlement terms, as well as those parties that did not participate in the court case. Further, in the absence of guidelines, local governments have been more reluctant to update their master programs due to the lack of predictability as to whether such actions will be approved by DOE and upheld by a growth management hearings board.

**Summary:** A staggered schedule, running from 2005 to 2014 and every seven years after the initial deadline, is established for the development, amendment, and review of shoreline master programs by local governments.

State funding must be provided to local governments at least two years prior to the deadline. Local governments that do not receive state funding may postpone the deadline until the following biennium, at which time they must be given first priority for funding and the deadline for their update will be two years after receiving the funds. With the exception of counties and cities scheduled to complete their updates



in either 2005 or 2009, updates must be completed within two years after DOE approves the grant.

Local governments must develop or amend their shoreline master programs by December 1, 2014, at the latest to comply with the new DOE guidelines, regardless of available state funding. Local governments may update their master programs earlier than the timelines provided and are eligible for grants, if funding is available. The current statutory provision prohibiting DOE from making grants to local governments in excess of the recipient's contribution is removed.

DOE is no longer required to review the shoreline guidelines at least once every five years. DOE may not adopt amendments to the guidelines more than once per year and these amendments must be limited to technical or procedural issues related to the review of master programs or issues related to guideline compliance with state statutes.

**Votes on Final Passage:**

Senate	31	18	
House	61	37	(House amended)
Senate	44	5	(Senate concurred)

**Effective:** July 27, 2003

## Roll Calls on a Bill: 6012 (2003-04)

Brief Description: Codifying shoreline rules.

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### 2003 Regular Session

Chamber: SENATE  
Bill No.: SSB 6012  
Description: 258 FRASER STRIKER  
Item No.: 44  
Transcript No.: 66  
Date: 03-19-2003

Yeas: 24 Nays: 25 Absent: 00 Excused: 00

Voting yea: Senators Brown, Carlson, Eide, Esser, Fairley, Finkbeiner, Franklin, Fraser, Haugen, Jacobsen, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, Poulsen, Prentice, Rasmussen, Regala, Sheldon, B., Shin, Spanel, Thibaudeau, Winsley

Voting nay: Senators Benton, Brandland, Deccio, Doumit, Hale, Hargrove, Hewitt, Honeyford, Horn, Johnson, McCaslin, Morton, Mulliken, Oke, Parlette, Reardon, Roach, Rossi, Schmidt, Sheahan, Sheldon, T., Stevens, Swecker, West, Zarelli

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### 2003 Regular Session

Chamber: SENATE  
Bill No.: SSB 6012  
Description: 3RD READING & FINAL PASSAGE  
Item No.: 45  
Transcript No.: 66  
Date: 03-19-2003

Yeas: 31 Nays: 18 Absent: 00 Excused: 00

Voting yea: Senators Benton, Brandland, Carlson, Deccio, Doumit, Esser, Finkbeiner, Hale, Hargrove, Hewitt, Honeyford, Horn, Johnson, McCaslin, Morton, Mulliken, Oke, Parlette, Rasmussen, Reardon, Roach, Rossi, Schmidt, Sheahan, Sheldon, T., Shin, Stevens, Swecker, West, Winsley, Zarelli

Voting nay: Senators Brown, Eide, Fairley, Franklin, Fraser, Haugen, Jacobsen, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, Poulsen, Prentice, Regala, Sheldon, B., Spanel, Thibaudeau

## 2003 Regular Session

Chamber: HOUSE  
Bill No.: SSB 6012  
Description: FP AS AMD BY THE HOUSE  
Item No.: 2  
Transcript No.: 95  
Date: 04-17-2003

Yeas: 61 Nays: 37 Absent: 00 Excused: 00

Voting Representatives Anderson, Berkey, Buck, Chase, Clibborn, Cody, Conway,  
yea: Cooper, Darneille, Delvin, Dickerson, Dunshee, Edwards, Eickmeyer,  
Flannigan, Fromhold, Gombosky, Haigh, Hudgins, Hunt, Hunter, Jarrett,  
Kagi, Kenney, Kessler, Kirby, Lantz, Linville, Lovick, McCoy, McDermott,  
McDonald, McIntire, Miloscia, Moeller, Morrell, Morris, Murray, Nixon,  
O'Brien, Pettigrew, Pflug, Priest, Quall, Rockefeller, Romero, Ruderman,  
Santos, Schoesler, Schual-Berke, Shabro, Simpson, Sommers, Sullivan,  
Tom, Upthegrove, Voloria, Wallace, Wood, Woods, and Mr. Speaker

Voting Representatives Ahern, Alexander, Armstrong, Bailey, Benson, Blake, Boldt,  
nay: Bush, Cairnes, Campbell, Carrell, Chandler, Clements, Condotta, Cox,  
Crouse, DeBolt, Ericksen, Grant, Hankins, Hatfield, Hinkle, Holmquist,  
Kristiansen, Mastin, McMahan, McMorris, Mielke, Newhouse, Orcutt,  
Pearson, Roach, Schindler, Sehlin, Skinner, Sump, Talcott

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## 2003 Regular Session

Chamber: SENATE  
Bill No.: SSB 6012  
Description:  
Item No.: 15  
Transcript No.: 104  
Date: 04-26-2003

Yeas: 44 Nays: 05 Absent: 00 Excused: 00

Voting Senators Benton, Brandland, Brown, Carlson, Deccio, Doumit, Eide, Esser,  
yea: Fairley, Finkbeiner, Franklin, Fraser, Hale, Hargrove, Haugen, Hewitt, Horn,  
Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe,  
McCaslin, Oke, Parlette, Poulsen, Prentice, Rasmussen, Reardon, Regala,  
Roach, Rossi, Schmidt, Sheahan, Sheldon, B., Sheldon, T., Shin, Spanel,  
Swecker, Thibaudeau, Winsley, Zarelli

Voting Senators Honeyford, Morton, Mulliken, Stevens, West  
nay:



## ENGROSSED SUBSTITUTE SENATE BILL 6072

*Funding pollution abatement and response*

### PROGRAM/AGENCY IMPACTS

#### Air Quality

ESSB 6072 provides a funding mechanism, a distribution formula and an appropriation to retrofit public school buses with exhaust emission control devices, and to provide funding for fueling infrastructure to allow school bus fleets to use alternative cleaner fuels. ESSB 6072 also allows a restricted percentage – no more than 15% - of the air quality related funding to be used to reduce air toxics and vehicle related emissions.

The Department of Ecology and the state's seven local air agencies will need to establish objectives, technical specifications and performance measures; create contracts and grants; develop lists of qualified vendors and suppliers who will begin retrofitting, as appropriate, emission controls on approximately 8500 existing diesel school buses in Washington.

The Department of Ecology must provide a report to the legislative transportation committees on the progress of the implementation of the clean air programs by December 31, 2004.

#### Oil Spill Prevention

ESSB 6072 provides a funding mechanism and an appropriation to:

- Continue funding a rescue tug at the entrance of the Strait of Juan de Fuca whose primary mission is to arrest the drift of disabled vessels in order to prevent major oil spills.
- Complete a technical evaluation to determine if the current tug escort requirements for laden (loaded) tankers under RCW 88.16.190 should be modified. Ecology is required to report its findings and recommendations to the Governor and appropriate standing legislative committees by January 1, 2005.

The funding mechanisms for clean air activities and rescue tug operation expire July 1, 2008.

## RESOURCE IMPACTS

ESSB 6072 provides biennial appropriations as noted below:

- \$10,000,000 to the Department of Ecology from the air pollution control account for the clean air work defined in ESSB 6072, primarily clean-up of diesel school buses. Note: 85% of the funds must be distributed to air agencies in the state in direct proportion to the amount of existing specified motor vehicle related fees collected within their counties of jurisdiction.
- \$2,876,000 from the vessel response account for the Department of Ecology to contract for emergency vessel towing services including provision to fund a rescue tug at the entrance to the Strait of Juan De Fuca.
- \$200,000 to the Department of Ecology from the oil spill prevention account to complete a study of the current tug escort system.

The appropriations and anticipated revenue for the 03-05 biennium should be adequate to meet obligations under ESSB 6072 in FY 04, with a significant anticipated revenue shortfall for FY 05 and beyond the rescue tug after FY 04.

## WORK PLAN

### *Air Quality*

- Establish steering committee of Ecology, Office of Superintendent of Public Instruction (OSPI) and local air agency senior policy staff. Steering Committee Responsibilities: Define roles/responsibilities of Ecology, OSPI and local air agencies; identify goals and objectives for the school bus retrofit program - 6 month short-term; 1 year, 5 year; set performance targets for each goal/objective; outline and assign lead agency for administrative processes - grants/contracts, \$ allocation/tracking, fleet statistics etc.; identify specific tasks and next steps and assign work.  
Summer 2003
- Establish technical criteria for diesel school bus retrofit technology purchase and installation.  
Summer 2003
- Establish distribution formula, grant mechanism and fund tracking system and disperse money as specified by legislation to local air agencies.  
Summer 2003
- Provide technical assistance to local air agencies, OSPI and school districts; provide grants and contracts management.

Work begins summer 2003 and continues through 2008

- Establish centralized vendor/supplier contracts through the Department of General Administration for diesel retrofit technology purchase and installation.  
Fall 2003
- Begin installation of retrofit emission controls on school buses.  
Fall 2003
- Progress report to the Legislature on implementation of clean air activities.  
December 31, 2004

*Oil Spill Prevention - Rescue Tug Deployment*

- Decide whether to re-bid or extend the current contract for the rescue tug.  
August 2003
- Award private sector contract to deploy the tug during 2003-2004 season.  
Summer 2003
- Rescue tug deployed at Neah Bay; tug operation is coordinated with the U.S. Coast Guard and their federally funded "Sound Stewardship Plan".  
Mid-September 2003 through April 2004
- Re-bid and award a 4-year contract for the rescue tug.  
Spring and Summer 2004
- Rescue tug deployed at Neah Bay.  
2004 through 2008 (approximately 200+ days per year)

*Oil Spill Prevention - Tug Escort Study*

- Consult with stakeholders regarding scope of study.  
Late Summer/ Fall 2003
- Develop, compete, and award technical contract(s).  
Fall 2003/ Spring 2004
- Complete study and recommendations with stakeholder participation.  
Fall 2004
- Deliver final report to the Legislature.  
January 1, 2005

**Contact person:**

Stu Clark – Air Quality Program; **Phone:** 360/407-6873;

**E-mail:** [scla461@ecy.wa.gov](mailto:scla461@ecy.wa.gov)

Jon Neel – Spill Prevention, Preparedness & Response Program;

**Phone:** 360/407-6905; **E-mail:** [jnee461@ecy.wa.gov](mailto:jnee461@ecy.wa.gov)



# FINAL BILL REPORT

## ESSB 6072

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### PARTIAL VETO

C 264 L 03

Synopsis as Enacted

**Brief Description:** Funding pollution abatement and response.

**Sponsors:** Senate Committee on Highways & Transportation (originally sponsored by Senators Horn and Haugen).

### Senate Committee on Highways & Transportation

**Background:** Prior to 2000, each owner of a motor vehicle paid a \$2 per vehicle clean air excise tax at the time of initial vehicle registration or renewal. Funds from this fee were used to implement provisions of the Clean Air Act.

Currently, there is a tug boat at the entrance of the Strait of Juan de Fuca, which is used during part of the year to rescue disabled vessels in order to prevent oil spills in the event a vessel goes aground.

**Summary:** Eighty five percent of the proceeds deposited in the segregated subaccount of the air pollution control account are distributed to local air pollution control authorities and 15 percent of the proceeds are distributed to the Department of Ecology. The funds are used to retrofit school buses with exhaust emission control devices, reduce vehicle emissions, reduce air contaminants, and to provide funding for fueling infrastructure to allow school bus fleets to use alternative cleaner fuels.

The Department of Ecology must provide a report to the legislative transportation committees on the progress of the implementation of the programs funded by the fee deposited in the segregated subaccount of the air pollution control account by December 31, 2004.

Proceeds deposited in the vessel response account are used to fund a tug boat at the entrance of the Strait of Juan de Fuca whose primary mission is to arrest the drift of disabled vessels in order to prevent a spill.

Beginning with the effective date of the act, and until July 1, 2008, the fees collected under RCW 46.12.080, 46.12.170, and 46.12.181 are credited as follows:

- (i) 58.12 percent is credited to a segregated subaccount of the air pollution control account in RCW 70.94.015;
- (ii) 15.71 percent is credited to the vessel response account created in section 3 of this act; and

(iii)the remainder is credited into the transportation 2003 account (nickel account).

Beginning July 1, 2008, and thereafter, the fees collected under RCW 46.12.080, 46.12.170, and 46.12.181 are credited to the transportation 2003 account (nickel account).

The vessel response account expires in 2008. The distribution of the air pollution control account created in this act expires in 2008.

**Appropriation:** \$10,000,000 to the Department of Ecology from the air pollution control account, \$2,876,000 to the Department of Ecology from the vessel response account, and \$200,000 from the oil spill prevention account.

**Votes on Final Passage:**

Senate	42	6
House	63	35

**Effective:** July 27, 2003

**Partial Veto Summary:** The Governor vetoed section 6, which would have inadvertently eliminated the \$50 physical inspection fee required for some out-of-state vehicles prior to registration in Washington State.

## **Roll Calls on a Bill: 6072 (2003-04)**

Brief Description: Funding pollution abatement and response.

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### **2003 Regular Session**

Chamber: SENATE  
Bill No.: ESSB 6072  
Description: 3RD READING & FINAL PASSAGE  
Item No.: 22  
Transcript No.: 104  
Date: 04-26-2003

Yeas: 42 Nays: 06 Absent: 00 Excused: 01

Voting Senators Benton, Brandland, Brown, Carlson, Deccio, Doumit, Eide,  
yea: Esser, Fairley, Finkbeiner, Franklin, Fraser, Hale, Hargrove, Haugen,  
Hewitt, Horn, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles,  
McAuliffe, Oke, Parlette, Poulsen, Prentice, Rasmussen, Reardon,  
Regala, Rossi, Schmidt, Sheahan, Sheldon, B., Shin, Spanel, Stevens,  
Swecker, Thibaudeau, Winsley, Zarelli

Voting Senators McCaslin, Morton, Mulliken, Roach, Sheldon, T., West  
nay:

Excused: Senator Honeyford

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### **2003 Regular Session**

Chamber: HOUSE  
Bill No.: ESSB 6072  
Description: FINAL PASSAGE  
Item No.: 10  
Transcript No.: 105  
Date: 04-27-2003

Yeas: 63 Nays: 35 Absent: 00 Excused: 00

Voting Representatives Anderson, Berkey, Bush, Cairnes, Campbell, Carrell,  
yea: Chase, Clibborn, Cody, Conway, Cooper, Darneille, Dickerson, Dunshee,  
Edwards, Eickmeyer, Flannigan, Fromhold, Gombosky, Grant, Haigh,  
Hatfield, Hudgins, Hunt, Hunter, Jarrett, Kagi, Kenney, Kessler, Kirby, Lantz,  
Linville, Lovick, McCoy, McDermott, McDonald, McIntire, Miloscia, Moeller,  
Morrell, Morris, Murray, Nixon, O'Brien, Pettigrew, Pflug, Priest, Quall,  
Rockefeller, Romero, Ruderman, Santos, Schual-Berke, Simpson,  
Sommers, Sullivan, Tom, Upthegrove, Voloria, Wallace, Wood, Woods, and

Mr. Speaker

Voting Representatives Ahern, Alexander, Armstrong, Bailey, Benson, Blake, Boldt,  
nay: Buck, Chandler, Clements, Condotta, Cox, Crouse, DeBolt, Delvin, Ericksen,  
Hankins, Hinkle, Holmquist, Kristiansen, Mastin, McMahan, McMorris,  
Mielke, Newhouse, Orcutt, Pearson, Roach, Schindler, Schoesler, Sehlin,  
Shabro, Skinner, Sump, Talcott

## **SENATE BILL 6087**

*Transferring funds to the site closure account*

### **PROGRAM IMPACTS**

This act amends RCW 43.200.080 and 70.98.098 by transferring \$13.8 million from the commercial low-level radioactive waste disposal facility closure account to the state general fund. The facility is operated by US Ecology, Inc.

The money is scheduled for repayment beginning 2008 from the Perpetual Care and Maintenance (PC&M) fund. The transfer of funds from PC&M to Site Closure can only occur with the written agreement by the US Department of Energy (USDOE). OFM expects we will negotiate the agreement with USDOE.

### **RESOURCE IMPACTS**

It is not anticipated implementation of this bill will require significant use of agency resources.

### **WORK PLAN**

We will send a letter to USDOE in mid-August informing them of this legislation. A quarterly budget meeting is scheduled for late-August and we'll answer clarifying questions. Negotiations will start in earnest in November.

If agreement is not reached the legislation requires the money be paid back from the state general fund. With this provision there appears little incentive or advantage for USDOE to agree.

We will keep the Department of Health informed in this process as it has responsibility for financial assurance for closing the facility.

**Contact person:** Larry Goldstein – Nuclear Waste Program;  
**Phone:** 360/407-6573; **E-mail:** [lgol461@ecy.wa.gov](mailto:lgol461@ecy.wa.gov)

# FINAL BILL REPORT

## SB 6087

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C 21 L 03 E1

Synopsis as Enacted

**Brief Description:** Transferring funds to the site closure account.

**Sponsors:** Senator Rossi.

**Background:** The state leases 1000 acres of land from the U.S. Department of Energy (DOE) within the Hanford reservation as a low-level radioactive waste facility. The generators of the low-level radioactive waste deposited at the facility are members of the Northwest Interstate Compact. The source of the waste are non-energy and non-weapon activities, such as hospitals and universities. The Department of Ecology sublets the operation of the facility to a private operator. The department imposed and collected fees to defray the state's liability associated with the completion, closure and perpetual maintenance of the facility. These fees were deposited in the site closure account and the perpetual surveillance and maintenance account. The site closure account will reimburse the final closure and decommissioning of the facility. The perpetual surveillance and maintenance account assures funding for post closure maintenance of the facility.

**Summary:** The Legislature is authorized to transfer \$13.8 million from the site closure account to the state general fund in the 2003-05 biennium. Beginning July 1, 2008, and each year thereafter until 2033, the State Treasurer is directed to transfer \$966,000 from the perpetual surveillance and maintenance account to the site closure account. This transfer is dependent upon the U.S. DOE amending the contract with the state. If the U.S. DOE does not agree, the State Treasurer is directed to transfer from the state general fund on the same schedule to repay the site closure account.

### **Votes on Final Passage:**

#### First Special Session

Senate	35 13
House	70 24

**Effective:** September 9, 2003

## **Roll Calls on a Bill: 6087 (2003-04)**

Brief Description: Transferring funds to the site closure  
account.

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### **2003 1st Special Session**

Chamber: SENATE  
Bill No.: SB 6087  
Description: 3RD READING & FINAL PASSAGE  
Item No.: 8  
Transcript No.: 25  
Date: 06-05-2003

Yeas: 35 Nays: 13 Absent: 00 Excused: 01

Voting yea: Senators Benton, Brandland, Carlson, Deccio, Doumit, Eide, Esser, Fairley, Finkbeiner, Hale, Hargrove, Haugen, Hewitt, Honeyford, Horn, Johnson, Kastama, Keiser, McCaslin, Morton, Mulliken, Oke, Parlette, Poulsen, Rasmussen, Reardon, Roach, Rossi, Schmidt, Sheahan, Sheldon, T., Shin, Stevens, Swecker, Zarelli  
Voting nay: Senators Brown, Franklin, Fraser, Jacobsen, Kline, Kohl-Welles, McAuliffe, Prentice, Regala, Sheldon, B., Spanel, Thibaudeau, Winsley  
Excused: Senator West

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### **2003 1st Special Session**

Chamber: HOUSE  
Bill No.: SB 6087  
Description: FINAL PASSAGE  
Item No.: 3  
Transcript No.: 26  
Date: 06-06-2003

Yeas: 70 Nays: 24 Absent: 00 Excused: 04

Voting yea: Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Benson, Berkey, Blake, Buck, Bush, Cairnes, Campbell, Carrell, Chandler, Clements, Clibborn, Cody, Condotta, Conway, Darneille, DeBolt, Dunshee, Ericksen, Flannigan, Fromhold, Gombosky, Grant, Haigh, Hatfield, Hudgins, Hunt, Hunter, Jarrett, Kagi, Kessler, Kirby, Kristiansen, Lantz, Lovick, McCoy, McDermott, McDonald, McMorris, Miloscia, Morrell, Morris, Murray, Newhouse, Nixon, O'Brien, Pearson, Pettigrew, Pflug, Priest, Quall, Rockefeller, Ruderman, Santos, Schual-Berke, Sehlin,

Shabro, Sommers, Sullivan, Sump, Talcott, Tom, Wallace, Wood, Woods,  
and Mr. Speaker

Voting Representatives Chase, Cooper, Cox, Crouse, Delvin, Dickerson,  
nay: Edwards, Eickmeyer, Hankins, Hinkle, Holmquist, Kenney, Linville, Mastin,  
McIntire, McMahan, Mielke, Moeller, Orcutt, Romero, Schindler, Simpson,  
Upthegrove, Veloria

Excused: Representatives Boldt, Roach, Schoesler, Skinner